

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**IN THE MATTER OF:**

██████████  
████████████████████  
████████████████████

Reg. No.: 14-019665  
Issue No.: 2009  
Case No.: ██████████  
Hearing Date: June 25, 2015  
County: Wayne-District 19

**ADMINISTRATIVE LAW JUDGE: Alice C. Elkin**

**HEARING DECISION**

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a 3-way telephone hearing was held on June 25, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and ██████████, authorized hearing representative with ██████████; Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Eligibility Specialist/Medical Contact Worker.

**ISSUE**

Did the Department properly determine that Claimant was not disabled for purposes of the Medical Assistance (MA-P) benefit program?

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On February 14, 2014, Claimant submitted an application for public assistance seeking MA-P benefits, with request for retroactive coverage to December 2013 (Exhibit A, pp. 9-12).
2. On July 22, 2014, the Medical Review Team (MRT) found Claimant not disabled (Exhibit A, pp. 13-14).
3. On August 27, 2014, the Department sent Claimant a Benefit Notice denying the application based on MRT's finding of no disability (Exhibit A, pp. 3-4).
4. On November 7, 2014, the Department received the AHR's timely written request for hearing (Exhibit 1; Exhibit A, pp. 1-2, 7-8).

5. Claimant alleged physical disabling impairment due to asthma/chronic obstructive pulmonary disease (COPD), arthritis, chronic back and leg pain, joint pain, high blood pressure, vision problems, migraines.
6. Claimant alleged mental disabling impairments due to depression, anxiety, bipolar disorder, and memory loss.
7. At the time of hearing, Claimant was [REDACTED] years old with a [REDACTED], birth date; she was [REDACTED] in height and weighed [REDACTED] pounds.
8. Claimant is a high school graduate who took special education classes and has reading comprehension issues.
9. Claimant has an employment history of work as retail store manager.
10. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

### **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

MA-P benefits are available to disabled individuals. BEM 105 (January 2014), p. 1; BEM 260 (July 2014), pp. 1-4. Disability for MA-P purposes is defined as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). To meet this standard, a client must satisfy the requirements for eligibility for Supplemental Security Income (SSI) receipt under Title XVI of the Social Security Act. 20 CFR 416.901.

To determine whether an individual is disabled for SSI purposes, the trier-of-fact must apply a five-step sequential evaluation process and consider the following:

- (1) whether the individual is engaged in SGA;
- (2) whether the individual's impairment is severe;
- (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404;
- (4) whether the individual has the residual functional capacity to perform past relevant work; and
- (5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work.

20 CFR 416.920(a)(1) and (4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

### **Step One**

As outlined above, the first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Claimant has not engaged in SGA activity during the period for which assistance might be available. Therefore, Claimant is not ineligible under Step 1 and the analysis continues to Step 2.

## **Step Two**

Under Step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for MA-P means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 12 months. 20 CFR 416.922.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). An impairment, or combination of impairments, is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a); see also *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985). Basic work activities means the abilities and aptitudes necessary to do most jobs, including (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the *de minimus* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28. If such a finding is not clearly established by medical evidence or if the effect of an impairment or combination of impairments on the individual's ability to do basic work activities cannot be clearly determined, adjudication must continue through the sequential evaluation process. *Id.*; SSR 96-3p.

In the present case, Claimant alleges physical disabling impairment due to asthma/COPD, arthritis, chronic back and leg pain, joint pain, high blood pressure, vision problems, migraines and mental disabling impairment due to depression, anxiety, bipolar disorder, and memory loss. The medical evidence presented at the hearing was reviewed and is summarized below.

On December 3, 2013, Claimant went to the emergency department complaining of nausea and vomiting bloody emesis. She was treated and released (Exhibit A, pp. 121-127). She returned and was hospitalized from December 14, 2013, to December 16, 2013, following complaints of vomiting and abdominal and back pain. A head CT showed no evidence of acute intracranial process and acute bilateral maxillary sinusitis. She was diagnosed with, and treated for, an upper GI bleed, left cornea abrasion and lower extremity weakness. She was discharged after her condition stabilized (Exhibit A, pp. 108-120, 131-141).

Claimant's medical records from February 12, 2014, to December 16, 2014, show Claimant was receiving ongoing treatment for lower back pain and that she had decreased flexion and extension of the spine (Exhibit 1, pp. 34-57, 109-118; Exhibit A, pp. 23-34). Records show Claimant is a smoker (Exhibit A, p. 115; Exhibit 1, pp. 34, 36, 38).

On June 11, 2014, Claimant's psychiatrist completed a psychiatric evaluation diagnosing her with bipolar I disorder, single manic episode, moderate and generalized anxiety disorder. Claimant reported the suicides of her husband and mother and ongoing medical issues. The doctor noted unremarkable content of thought and thought processes, normal stream of mental activity and concentration, intact memory, fair judgment, needy and dramatic presentation during interview, and anxious emotional state. The doctor assigned Claimant a global assessment functioning (GAF) score of 49 (Exhibit A, pp. 41-47). This evaluation was consistent with a July 10, 2013, evaluation (Exhibit A, pp. 99-105).

The medical packet included Claimant's psychiatric progress notes and progress notes showing therapy attendance for July 9, 2013; July 22, 2013; August 8, 2013; September 15, 2013; February 19, 2014; March 5, 2014; March 9, 2014; March 19, 2014; April 16, 2014; and May 14, 2014; July 9, 2014; August 7, 2014; August 26, 2014; September 7, 2014; September 17, 2014; October 1, 2014; and November 12, 2014 (Exhibit A, pp. 48-98, 106-107; Exhibit 2, pp. 1-30, 76-108).

In consideration of the de minimus standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Claimant suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 12 months. Therefore, Claimant has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

### **Step Three**

Step 3 of the sequential analysis of a disability claim requires a determination of whether the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on the objective medical evidence presented, Listings 1.02 (major dysfunction of a joint), 1.04 (disorders of the spine), 2.04 (loss of visual efficiency), 3.02 (chronic pulmonary insufficiency), 3.03 (asthma), 4.11 (chronic venous insufficiency), 12.04 (affective disorders), and 12.06 (anxiety-related disorders) were considered. The medical evidence presented does **not** show that Claimant's impairments meet or equal the required level of severity of any of the above-referenced listings to be considered as disabling without further consideration. Because Claimant's impairments are insufficient to meet, or to equal, the severity of a listing, Claimant is not disabled under Step 3 and the analysis continues to Step 4.

### **Residual Functional Capacity**

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Step 4, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. Impairments, and any related symptoms, may cause physical and mental limitations that affect what a person can do in a work setting. 20 CFR 416.945(a)(1). RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s) and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4). The total limiting effects of all impairments, including those that are not severe, are considered. 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If the limitations and restrictions imposed by the individual's impairment(s) and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). To determine the exertional requirements, or physical demands, of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a).

#### **Sedentary work.**

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is

defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, [an individual] must have the ability to do substantially all of these activities. If someone can do light work, ... he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

Medium work.

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, ... he or she can also do sedentary and light work.

Heavy work.

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, ... he or she can also do medium, light, and sedentary work.

Very heavy work.

Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, ... he or she can also do heavy, medium, light, and sedentary work.

20 CFR 416.967.

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of nonexertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., unable to tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the nonexertional impairment involves a mental disorder, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. Id.; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1).

In this case, Claimant alleged both exertional and nonexertional limitations arising from her impairments. She testified that she had difficulty with her memory, experienced sharp pain in her back, shortness of breath, migraines, numbness in her feet and poor

eyesight. Because of her condition, she could only walk a half block using a walking stick, sit not longer than 20 minutes before experiencing pain, and stand no longer than 15 minutes before her legs would go numb and lock up. She testified she could lift 10 pounds, use her hands to grip and grasp provided she could make some adjustments, and could not bend or squat. She lived with a roommate. She had modified her bathroom and her dress routine to make it easier to dress. She testified she did her chores by sitting on a stool to wash dishes or on the floor to vacuum, and she could drive and shop unless she was having an anxiety attack. Her anxiety attacks, which could come as frequently as twice a week, kept her from leaving her home. She denied any suicidal or homicidal thoughts or current visual or audial hallucinations.

The medical record shows that Claimant has had ongoing complaints of lower back pain. The doctor has identified decreased range of motion of the spine but there is no diagnostic support for any exertional limitations. In the absence of such evidence, it is found that Claimant maintains the physical RFC to perform light work as defined by 20 CFR 416.967(b).

With respect to the nonexertional impairments, the record shows that Claimant was diagnosed with bipolar I disorder, single manic episode, moderate and generalized anxiety and, as of July 2014, had a GAF score of 49. In the July 2014 psychiatric evaluation, the doctor noted unremarkable content of thought and thought processes, normal stream of mental activity and concentration, intact memory, fair judgment, needy and dramatic presentation during interview, and anxious emotional state. (Exhibit A, pp. 41-47.)

On May 14, 2014, Claimant's therapist, a licensed master social worker (LMSW) completed an affective disorders assessment and form concerning mental ability critical for performing unskilled work. Statements by the therapist do not constitute acceptable medical sources. 20 CFR 416.913(a). However, those statements may be considered to assess the severity of an individual's impairment and how it affects the individual's ability to work. 20 CFR 416.913(d)(4).

In this case, Claimant's therapist indicated Claimant had marked restrictions of activities of daily living and extreme difficulties in maintaining social functioning and concentration, persistence, or pace, noting that she isolated and stayed home, could not leave the home without being accompanied, and could not complete chores because of flight of ideas. She indicated that Claimant would not have the substantial ability to perform most basic work-related activities on a sustained basis (Exhibit 1, pp. 67-73).

In a psychiatric progress note entered November 12, 2014, the last available psychiatric progress note, Claimant's psychiatrist indicated that Claimant reported not sleeping well, fatigue, and inability to keep her house clean. In the subjective comments, the psychiatrist noted as follows:

Good grooming and hygiene. Attitude is pleasant and cooperative. Good eye contact is made. Speech is clear, normal rate and tone, spontaneous. Mood is “depressed” affect full range and appropriate. Thought process is goal directed. Thought content contains no suicidal or homicidal thoughts. Insight and judgment are intact.

(Exhibit 2, p. 4.)

Therefore, the medical evidence, particularly the comments by Claimant’s psychiatrist made after the therapist’s assessment, does not support the extent of limitations identified by Claimant’s therapist. A review of the medical file, and Claimant’s testimony, supports moderate limitations on Claimant’s ability to perform basic work activities.

Claimant’s RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

#### **Step Four**

Step 4 in analyzing a disability claim requires an assessment of Claimant’s RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

As determined in the RFC analysis above, Claimant is limited to light work activities and has moderate limitations in her mental capacity to perform basic work activities. Claimant’s work history in the 15 years prior to the application consists of work as a retail store manager (light, unskilled). In light of the entire record and Claimant’s RFC, it is found that Claimant retains the RFC to meet the physical and mental demands to perform past relevant work. Accordingly, Claimant is found **not** disabled at Step 4, and no further analysis is required.

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds Claimant **not** disabled for purposes of the MA-P benefit programs.

**DECISION AND ORDER**

Accordingly, the Department's determination is AFFIRMED.



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**Alice C. Elkin**  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

Date Signed: **7/16/2015**

Date Mailed: **7/16/2015**

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**NOTICE OF APPEAL:** A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

