

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201366686
Issue No(s): 2009
Case No.: [REDACTED]
Hearing Date: February 12, 2014
County: Grand Traverse County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 telephone hearing was held on February 12, 2014, from Lansing, Michigan. Participants on behalf of Claimant included herself. Participants on behalf of the Department of Human Services (Department) included ES [REDACTED]

ISSUES

Did the Department of Human Services properly determine that Claimant is not disabled and deny Claimant's May 29, 2013 application for Medical Assistance (MA) based on disability and retroactive Medical Assistance (MA) based on disability?

FINDINGS OF FACT

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

1. Claimant was born on May 17, 1968. Claimant is 5' 6" tall and weighs approximately 240 pounds. Claimant's formal education consists of 16 years of school resulting in a Bachelor's Degree.
2. Claimant reports relevant work history in office management and career placement. Claimant reports last working in April 2012.
3. Claimant asserts disability based on a cognitive impairment, pain in the neck and head, and blurred vision.
4. On May 29, 2013, Claimant applied for Medical Assistance (MA) based on disability and retroactive Medical Assistance (MA) based on disability.

5. On August 15, 2013, the Department of Human Services Medical Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) based on disability.
6. On August 19, 2013, Claimant was sent notice of the Department's determination.
7. On August 26, 2013, Claimant submitted a request for hearing.
8. On October 16, 2013, the State Hearing Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) based on disability.
9. On February 12, 2014, at this hearing, Claimant waived time limits in order to present additional medical evidence.
10. On May 6, 2014, the State Hearing Review Team again determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) based on disability.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Disability determinations done by the State of Michigan for Medical Assistance (MA) based on disability use the Social Security Administration standards found in United States Code of Federal Regulations (CFR) at Title 20, Part 416. The law defines disability as the inability to do any substantial gainful activity 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 at least 12 months. To meet this definition, you must have severe impairments that make you unable to do your past relevant work or any other substantial gainful work that exists in the national economy.

In accordance with the Federal Regulations an initial disability determination is a sequential evaluation process. The evaluation consists of five steps that are followed in a set order.

STEP 1

At this step a determination is made on whether Claimant is engaging in substantial gainful activity (20 CFR 416.920(b)). If you are performing activities for pay or profit, we

will use 20 CFR 416.971 through 416.975 to evaluate the activities to determine if they are substantial gainful activity. Substantial gainful activity is defined as work activity: that is both substantial and gainful; and involves doing significant physical or mental activities. Gainful work activity is work activity that you do for pay or profit (20 CFR 416.972). If you are engaged in substantial gainful activity, you are not disabled regardless of how severe your physical or mental impairments are and regardless of your age, education, and work experience.

Based on the evidence in the record and Claimant's testimony, Claimant has not received earnings as an employee since the date of application. Therefore, Claimant is not engaged in substantial gainful activity. Claimant is not found ineligible and the analysis proceeds to step two.

STEP 2

At the second step it is determined whether you have a severe physical or mental impairment that meets the duration requirement or a combination of impairments that is severe and meets the duration requirement (20CFR 416.920). An impairment or combination of impairments is severe within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include:

Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;

Capacities for seeing, hearing, and speaking;

Understanding, carrying out, and remembering simple instructions;

Use of judgment;

Responding appropriately to supervision, co-workers and usual work situations;
and

Dealing with changes in a routine work setting.

An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities (20 CFR 416.921).

In addition to the limiting effect of the impairments they must also meet durational requirements, 90 days for State Disability Assistance (SDA) and 12 months for Medical Assistance (MA) based on disability. If we determine that your impairments are not severe, you are not disabled.

Claimant asserts disability based on a cognitive impairment, pain in the neck and head, and blurred vision. What follows is a synopsis of all relevant evidence in the record from medical sources presented in chronological order.

There is a physical examination report from [REDACTED] done February 12, 2014. (Newly submitted medical evidence) Claimant complained of pain with active cervical range of motion. The Doctor recorded that Claimant had reflexes within normal limits and moved about the room freely but did guard for any type of range of motion through the spine.

There is a CT scan report from a chest scan done with contrast on January 24, 2014. (Page 50) The CT was ordered in connection with Claimant's complaint of chest pain. Dr. Brouder incidentally noted degenerative disc disease at multiple levels of the thoracic spine.

There is a neuropsychological evaluation report from testing done by [REDACTED] on July 11, 2013. (pages 41-47) The testing showed Claimant had mild cognitive deficits in areas of auditory memory, executive functioning, working memory, and perceptual reasoning. The Doctor summarized that "[REDACTED] remains capable from a neuropsychological standpoint to manage her personal affairs including medication management, driving, and independent decision making. Her deficits correlate with reduced capacity to manage her previous work duties, but, assuming she responds to interventions to manage mood, cognition, and pain, she remains capable of gainful employment."

There is a radiology report from a neck ultrasound done on July 2, 2013. (Page 17) [REDACTED] noted two small masses which he assessed to be nonenlarged neck lymph nodes.

There is a June 21, 2013, primary care office visit report. (Pages 1-3) Claimant reported difficulty swallowing and right side jaw pain radiating into her neck and up into her head. A December 12, 2012 CT scan was reviewed and showed mild disc bulging C3-C7.

There is a June 2, 2013, [REDACTED] report from [REDACTED] who saw Claimant with complaint of headaches. (Page 5) There were notable finding by the Doctor.

20 CFR 416.927

How we weigh medical opinions. Regardless of its source, we will evaluate every medical opinion we receive. Unless we give a treating source's opinion controlling weight under paragraph (d)(2) of this section, we consider all of the following factors in deciding the weight we give to any medical opinion.

Examining relationship. Generally, we give more weight to the opinion of a source who has examined you than to the opinion of a source who has not examined you.

Treatment relationship. Generally, we give more weight to opinions from your treating sources, since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of your medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations.

Supportability. The more a medical source presents relevant evidence to support an opinion, particularly medical signs and laboratory findings, the more weight we will give that opinion. The better an explanation a source provides for an opinion, the more weight we will give that opinion. Furthermore, because nonexamining sources have no examining or treating relationship with you, the weight we will give their opinions will depend on the degree to which they provide supporting explanations for their opinions.

Consistency. Generally, the more consistent an opinion is with the record as a whole, the more weight we will give to that opinion.

Specialization. We generally give more weight to the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist.

The objective medical evidence has established that Claimant has an impairment, or combination thereof, that has more than a *de minimus* effect on Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, Claimant is not disqualified from receipt of Medical Assistance (MA) based on disability and the analysis continues.

STEP 3

At the third step, it is determined whether your impairments meet or equal the criteria of an impairment listed in a Social Security Administration impairment listing 20 CFR Part 404, Subpart P, Appendix 1. If your impairment meets or equals the criteria of a listing and meets the duration requirement, you are disabled.

Claimant's degenerative disc disease and disc bulges were compared with the Social Security Administration impairment listing 1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord.

Claimant's degenerative disc disease and disc bulges do not meet or equal these listings because there is no nerve root compromise.

Claimant's cognitive impairment was compared to Social Security Administration impairment listing 12.02 Organic Mental Disorders: Psychological or behavioral abnormalities associated with a dysfunction of the brain. History and physical examination or laboratory tests demonstrate the presence of a specific organic factor judged to be etiologically related to the abnormal mental state and loss of previously acquired functional abilities.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Demonstration of a loss of specific cognitive abilities or affective changes and the medically documented persistence of at least one of the following:

1. Disorientation to time and place; or
2. Memory impairment, either short-term (inability to learn new information), intermediate, or long-term (inability to remember information that was known sometime in the past); or
3. Perceptual or thinking disturbances (e.g., hallucinations, delusions); or
4. Change in personality; or
5. Disturbance in mood; or
6. Emotional lability (e.g., explosive temper outbursts, sudden crying, etc.) and impairment in impulse control; or
7. Loss of measured intellectual ability of at least 15 I.Q. points from premorbid levels or overall impairment index clearly within the severely impaired range on neuropsychological testing, e.g., the Luria-Nebraska, Halstead-Reitan, etc.;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration;

OR

C. Medically documented history of a chronic organic mental disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work

activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Claimant's cognitive impairment does not meet or equal this listing. There is no medical evidence of record indicating this level of impairment.

STEP 4

At the fourth step, we assess your residual functional capacity to determine if you are still able to perform work you have done in the past. Your residual functional capacity is your remaining physical, mental, and other abilities. It is a description of your maximum performance at work-like activities considering your impairments. It does not require that you be pain free, but rather is based on your ability to do work-like activities on a sustained basis despite limitations, such as pain, from your impairments. 20 CFR 416.929 says that statements about your pain or other symptoms will not alone establish that you are disabled, there must be medical signs and laboratory findings which show that you have a medical impairment(s) which could reasonably be expected to produce the pain or other symptoms alleged.

Your residual functional capacity is determined by considering all symptoms and the extent to which they can reasonably be accepted as consistent with the objective medical evidence and other evidence. All relevant evidence including reported symptoms and medical opinions are considered as required in 20 CFR 416.927, 416.928, and 416.929.

Physical, mental, and other abilities are outlined as follows in 20 CFR 416.945.

Physical abilities. When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work.

Mental abilities. When we assess your mental abilities, we first assess the nature and extent of your mental limitations and restrictions and then determine your residual functional capacity for work activity on a regular and continuing

basis. A limited ability to carry out certain mental activities, such as limitations in understanding, remembering, and carrying out instructions, and in responding appropriately to supervision, coworkers, and work pressures in a work setting, may reduce your ability to do past work and other work.

Other abilities affected by impairment(s). Some medically determinable impairment(s), such as skin impairment(s), epilepsy, impairment(s) of vision, hearing or other senses, and impairment(s) which impose environmental restrictions, may cause limitations and restrictions which affect other work-related abilities. If you have this type of impairment(s), we consider any resulting limitations and restrictions which may reduce your ability to do past work and other work in deciding your residual functional capacity.

Classifications of work based on physical exertion requirements are defined in 20 CFR 416.967.

(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.

(b) *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, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that 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.

(c) *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, we determine that he or she can also do sedentary and light work.

(d) *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, we determine that he or she can also do medium, light, and sedentary work.

Claimant asserts disability based on cognitive impairment, pain in the neck and head, and blurred vision. Consideration of your reported symptoms involves two parts. First is determining if there is any underlying medically determinable physical or mental

impairment, shown by medically acceptable clinical and laboratory diagnostic techniques that could reasonably be expected to produce the symptoms you have reported.

Next all the medically supported symptoms you reported are evaluated. The credibility of the symptom's intensity, persistence, and limiting affects you reported, is considered in light of the entire case record.

After consideration of the objective medical evidence, physical limitations caused by cervical spine problems are established. The mental limitations described by PsyD Von der Hoff in the July 11, 2013 neuropsychological evaluation report are also given weight and included.

Considered on the whole, the evidence, opinions, and credible testimony show you have the residual functional capacity to perform sedentary work at the unskilled level. Your past relevant work as an office manager exceeds your residual functional capacity to perform sedentary work at the unskilled level. You are not capable of performing any of your past relevant work. You are not found ineligible at this step.

STEP 5

At the fifth step your residual functional capacity (RFC) is considered along with your age, education, and work experience to see if you can make an adjustment to other work you have not previously done. If you have a combination of sufficient remaining abilities and transferable skills to adjust to other work, you are not disabled. If it is determined that you cannot make an adjustment to other work, we will find that you are disabled.

Age is one of the aspects of your vocational profile considered in this step. The following age categories are established in 20 CFR 416.963 for use in the Social Security Administration Medical-Vocational Guidelines.

A younger person is under age 50. If you are a younger person we generally do not consider that your age will seriously affect your ability to adjust to other work. However, in some circumstances, we consider that persons age 45-49 are more limited in their ability to adjust to other work than persons who have not attained age 45.

A person closely approaching advanced age is 50-54 years old. If you are closely approaching advanced age, we will consider that your age along with a severe impairment(s) and limited work experience may seriously affect your ability to adjust to other work.

A person of advanced age is over 55. We consider that at advanced age, age significantly affects a person's ability to adjust to other work. We have special

rules for persons of advanced age and for persons in this category who are closely approaching retirement age (age 60-64).

Education is another aspects of your vocational profile considered in this step. The following categories of education are established in 20 CFR 416.964 for use in the Social Security Administration Medical-Vocational Guidelines.

(1) *Illiteracy*. Illiteracy means the inability to read or write. We consider someone illiterate if the person cannot read or write a simple message such as instructions or inventory lists even though the person can sign his or her name. Generally, an illiterate person has had little or no formal schooling.

(2) *Marginal education*. Marginal education means ability in reasoning, arithmetic, and language skills which are needed to do simple, unskilled types of jobs. We generally consider that formal schooling at a 6th grade level or less is a marginal education.

(3) *Limited education*. Limited education means ability in reasoning, arithmetic, and language skills, but not enough to allow a person with these educational qualifications to do most of the more complex job duties needed in semi-skilled or skilled jobs. We generally consider that a 7th grade through the 11th grade level of formal education is a limited education.

(4) *High school education and above*. High school education and above means abilities in reasoning, arithmetic, and language skills acquired through formal schooling at a 12th grade level or above. We generally consider that someone with these educational abilities can do semi-skilled through skilled work.

(5) *Inability to communicate in English*. Since the ability to speak, read and understand English is generally learned or increased at school, we may consider this an educational factor. Because English is the dominant language of the country, it may be difficult for someone who doesn't speak and understand English to do a job, regardless of the amount of education the person may have in another language. Therefore, we consider a person's ability to communicate in English when we evaluate what work, if any, he or she can do. It generally doesn't matter what other language a person may be fluent in.

Work skills are another aspects of your vocational profile considered in this step. The following categories of work skills are established in 20 CFR 416.968 for use in the Social Security Administration Medical-Vocational Guidelines.

In order to evaluate your skills and to help determine the existence in the national economy of work you are able to do, occupations are classified as unskilled, semi-skilled, and skilled. In classifying these occupations, we use materials published by the Department of Labor. When we make disability determinations under this subpart, we use the following definitions:

(a) *Unskilled work.* Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. For example, we consider jobs unskilled if the primary work duties are handling, feeding and offbearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are needed. A person does not gain work skills by doing unskilled jobs.

(b) *Semi-skilled work.* Semi-skilled work is work which needs some skills but does not require doing the more complex work duties. Semi-skilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing or otherwise looking for irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage or injury; or other types of activities which are similarly less complex than skilled work, but more complex than unskilled work. A job may be classified as semi-skilled where coordination and dexterity are necessary, as when hands or feet must be moved quickly to do repetitive tasks.

(c) *Skilled work.* Skilled work requires qualifications in which a person uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled work may require laying out work, estimating quality, determining the suitability and needed quantities of materials, making precise measurements, reading blueprints or other specifications, or making necessary computations or mechanical adjustments to control or regulate the work. Other skilled jobs may require dealing with people, facts, or figures or abstract ideas at a high level of complexity.

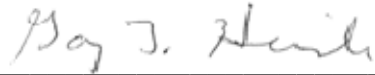
The Social Security Administration Medical-Vocational Guidelines are divided into categories based on the maximum sustained work capability a person still has.

Claimant is a 46 year old with more than a high school education, the residual functional capacity to perform sedentary work of an unskilled nature and a history of skilled work. In accordance with Social Security Administration Medical-Vocational Guidelines Rule 201.21 Claimant is not disabled.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly determined that Claimant is not disabled and deny Claimant's May 29, 2013 application for Medical Assistance (MA) based on disability and retroactive Medical Assistance (MA) based on disability.

The Department's action is **UPHELD**.



Gary F. Heisler
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 27, 2014

Date Mailed: June 27, 2014

NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted 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 Department, AHR or the claimant 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 the hearing decision is mailed.

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 48909-07322

201366686/GFH

GFH/hj

cc:

