

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-16321
Issue No(s): 2009, 4009
Case No.: [REDACTED]
Hearing Date: April 2, 2014
County: Kent County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 April 2, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Assistance Payments Manager. [REDACTED], Analyst, was present as an observer only.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) and State Disability Assistance (SDA) benefit programs?

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 August 15, 2013, Claimant applied for Medicaid (MA-P), retroactive MA-P and SDA.
2. On October 17, 2013, the Medical Review Team (MRT) found Claimant not disabled.
3. On October 21, 2013, the Department notified Claimant of the MRT determination.
4. On November 26, 2013, the Department received Claimant's timely written request for hearing.
5. On January 28, 2014, and July 29, 2014, the State Hearing Review Team (SHRT) found Claimant not disabled.

6. Claimant alleged physical disabling impairments of COPD, asthma, back problems, and possible cervical cancer.
7. Claimant alleged mental disabling impairments including history of dyslexia and special education classes.
8. At the time of hearing, Claimant was 49 years old with a [REDACTED] birth date; was 5'5" in height; and weighed 240 pounds.
9. Claimant completed the 8th grade and has a work history of cashier, cleaning service, catering, and some factory work.
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 Human Services Bridges Administrative Manual (BAM), Department of 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 Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

Disability is defined 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 not less than 12 months. 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it 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 ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 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, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant 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).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(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 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). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). 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). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity. Therefore, Claimant is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to

substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(b). 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). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting.

Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a Claimant's age, education, or work experience, the impairment would not affect the Claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Claimant alleges disability due to COPD, asthma, back problems, possible cervical cancer, and history of dyslexia and special education classes.

On December 1, 2012, Claimant was seen in the Emergency Department for right lower quadrant abdominal pain.

On December 13, 2012, Claimant was seen in the Emergency Department for back pain.

A December 21, 2012, Neurosurgery follow up note indicates Claimant has a history of low back pain radiating down her right lower extremity, a lumbar MRI showed a very large central right paracental disc herniation at L405 with degenerative disc disease and disc collapse at L4-5 and some degenerative changes at L5-S1 as well. There was also significant facet atrophy at 4-5. Physical therapy had not helped. While a fusion was

also discussed, the doctor recommended proceeding with decompression alone and if symptoms were to reoccur, there is a good chance she would need a fusion.

On January 17, 2013, a follow up chest x-ray for asthma from a prior chest x-ray 3 weeks earlier showed there continued to be linear atelectasis.

Claimant was hospitalized January 21-22, 2013 and underwent L4-5 lumbar laminectomy, bilateral L4-5 partial facetectomies, discectomies and foraminotomies.

Claimant was seen in the Emergency Department January 24-25, 2013 for acute pneumonia, postoperative back pain, and recent back surgery.

A February 26, 2013, Neurosurgery follow up note indicates Claimant's pain was worsening and had spread to her left lower extremity and had not received any lower extremity relief postoperatively. Claimant was referred for physical therapy and the importance of smoking cessation was discussed.

Claimant was hospitalized August 14-16, 2013 for an acute asthma exacerbation, smoking cessation and chronic back pain. It was noted that Claimant quit smoking three months earlier.

On August 15, 2013, a DHS-49 Medical Examination report was completed listing a diagnosis of asthma. Low back pain was also noted in the exam findings. The family medicine doctor indicated physical limitations of lifting less than 10 pounds occasionally and standing or walking less than 2 hours in an 8 hour work day.

A September 17, 2013 Neurosurgery progress note documents Claimant is nine months from the L4-5 lumbar laminectomy and has not had significant pain relief, and now the lumbar radicular symptoms involve her left lower extremity.

A September 27, 2013 MRI L-spine showed: there has been interval surgery in the lower lumbar spine, there are new findings at L4-5 where there are areas of endplate signal abnormalities likely related to degenerative disc disease, loss of disc height at this level and new L4-5 spondylolisthesis; minimal foraminal stenosis bilaterally at L4-5; and persistent bulging discs but the disc at L4-5 is improved and the disc appears to only extend into the epidural fat and does not efface the thecal sac to a significant degree.

An October 16, 2013 office visit note documents treatment for asthma and depression. The Assessment included COPD, moderately severe obstructive airway disease, depression was improved with medication, and ongoing back pain.

On November 6-9, 2013, Claimant was hospitalized and underwent L4-S1 lumbar fusion surgery. A respiratory consult indicated Claimant also had shortness of breath that was likely post-operative breathing changes but may have had a COPD flare contributing to symptoms.

A November 20, 2013 Neurosurgery follow up note indicates Claimant was wearing the brace as directed, the right leg pain is gone, and the left leg pain is almost gone and only occasional.

A November 25, 2013, office visit note indicates back pain has been better but there have been worsening symptoms regarding mood disorder. Claimant reported extreme difficulty functioning, depressed mood, difficulty concentrating, diminished interest or pleasure, fatigue, feelings of guilt, loss of appetite, restlessness and thoughts of death or suicide, loneliness, and crying daily.

On January 17, 2014, Claimant was seen at the pulmonology clinic. The impression and plan, in part, state Claimant likely has COPD rather than asthma.

A February 11, 2014, x-ray showed L4-S1 fusion with normal alignment.

On April 17, 2014, a DHS-49 Medical Examination Report completed by the neurosurgeon documents a diagnosis of low back pain status post lumbar fusion. Claimant's weight was 245 pounds. There were no physical limitations from this office. Claimant was last seen in February 2014 and it appears to note in the neuro exam findings that Claimant has recently re-called this office.

On April 22, 2014, a DHS-49 Medical Examination Report was completed by the family medicine doctor and documented diagnoses of asthma/COPD and chronic back pain. Claimant's weight was 237 pounds. Physical limitations included lifting less than 10 pounds frequently, up to 20 pounds occasionally, standing/walking less than 2 hours in an 8 hour work day and sitting less than 6 hours in an 8 hour work day. No mental limitations were indicated. An April 21, 2014 office visit note documents: a pre-operative exam for hysterectomy and report that the OBGYN thinks there may be ovarian cancer; history of the lumbar laminectomy then November surgery for lumbar fusion but still has back pain, sitting hurts and Norco helps, to follow up with neurosurgeon regarding injections, getting physical therapy; history of asthma/COPD moderate-severe obstructive airway disease; and prior diagnosis of depression but not depressed anymore.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Claimant has presented medical evidence establishing that she does have some limitations on the ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms recent diagnosis and treatment of: back pain, including the January 2013 L4-5 lumbar laminectomy and November 6, 2013 L4-S1 lumbar fusion surgeries; asthma/COPD, and depression.

Based on the objective medical evidence, considered listings included: 1.00 Musculoskeletal System, 3.00 Respiratory System, and 12.00 Mental Disorders. However, the medical evidence was not sufficient to meet the intent and severity

requirements of any listing, or its equivalent. Accordingly, the Claimant cannot be found disabled, or not disabled, at Step 3; therefore, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

Before considering the fourth step in the sequential analysis, a determination of the individual's residual functional capacity ("RFC") is made. 20 CFR 416.945. An individual's RFC is the most he/she can still do on a sustained basis despite the limitations from the impairment(s). *Id.* The total limiting effects of all the impairments, to include those that are not severe, are considered. 20 CFR 416.945(e).

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though 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. *Id.* 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. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity with the demands of past relevant work. *Id.* If an individual can no longer do past relevant work the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty to function 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. can't 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 impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The evidence confirms recent diagnosis and treatment of: back pain, including the January 2013 L4-5 lumbar laminectomy and November 6, 2013 L4-S1 lumbar fusion surgeries; obesity; asthma/COPD; and depression. Claimant's testimony indicated she can walk 5 minutes, stand 5-10 minutes, sit 30 minutes, and lift 10-15 pounds. Claimant's testimony regarding her limitations is mostly supported by the medical evidence and found mostly credible. Claimant has a long history of back pain, did not have improvement after the January 2013 L4-5 lumbar laminectomy, and has had improvement since the November 2013 L4-S1 lumbar fusion. However, Claimant's combination of impairments continue to preclude sitting for 6 hours in an 8 hour work day and standing/walking for 2 hours in an 8 hour work day. After review of the entire record it is found, at this point, that Claimant does not maintain the residual functional capacity to perform even sedentary work as defined by 20 CFR 416.967(a).

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3).

Claimant's has a work history of cashier, cleaning service, catering, and some factory work. In light of the entire record and Claimant's RFC (see above), it is found that Claimant is not able to perform her past relevant work. Accordingly, the Claimant cannot be found disabled, or not disabled, at Step 4; therefore, the Claimant's eligibility is considered under Step 5. 20 CFR 416.905(a).

In Step 5, an assessment of Claimant's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, Claimant was 49 years old and, thus, considered to be a younger individual for MA-P purposes. Claimant completed the 8th grade and has a work history of cashier, cleaning service, catering, and some factory work. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a

finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) cert den 461 US 957 (1983).

The evidence confirms recent diagnosis and treatment of: back pain, including the January 2013 L4-5 lumbar laminectomy and November 6, 2013 L4-S1 lumbar fusion surgeries; obesity; asthma/COPD; and depression. As noted above, Claimant does not maintain the residual functional capacity to perform even sedentary work as defined by 20 CFR 416.967(a).

After review of the entire record, and in consideration of the Claimant's age, education, work experience, RFC, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, Claimant is found disabled at Step 5.

In this case, the Claimant is also found disabled for purposes SDA benefits as the objective medical evidence also establishes a physical or mental impairment that met the federal SSI disability standard with the shortened duration of 90 days. In light of the foregoing, it is found that Claimant's impairments did preclude work at the above stated level for at least 90 days.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled for purposes of the MA and SDA benefit programs.

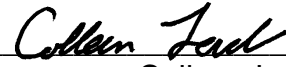
DECISION AND ORDER

Accordingly, the Department's determination is **REVERSED**.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Initiate a review of the application dated August 15, 2013, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. A review of this case shall be set for September 2015.

2. Issue the Claimant any supplement she may thereafter be due.



Colleen Lack
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: August 22, 2014

Date Mailed: August 22, 2014

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides or has its principal place of business in the State, 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 48909-07322

201416321/CL

CL/hj

cc:

