

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-21072
Issue No(s): 2009
Case No.: [REDACTED]
Hearing Date: May 6, 2014
County: Jackson 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, an in-person hearing was held on May 6, 2014, from Jackson, Michigan. Participants on behalf of Claimant included [REDACTED] the Claimant, and [REDACTED], Authorized Hearing Representative. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist.

During the hearing, Claimant waived the time period for the issuance of this decision, in order to allow for the submission of additional medical evidence. The evidence was received, reviewed, and forwarded to the State Hearing Review Team ("SHRT") for consideration. The SHRT found Claimant not disabled. This matter is now before the undersigned for a final determination.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) 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 July 11, 2013, Claimant applied for Medicaid (MA-P) and retroactive MA-P.
2. On October 8, 2013, the Medical Review Team (MRT) found Claimant not disabled.
3. On October 11, 2013, the Department notified Claimant of the MRT determination.
4. On December 27, 2013, the Department received Claimant's timely written request for hearing.

5. On March 5, 2014, and June 25, 2014, the State Hearing Review Team (SHRT) found Claimant not disabled.
6. Claimant alleged multiple physical disabling impairment including COPD, asthma, arthritis, abdominal pain from removal of left adrenal gland, sleep apnea, and muscle spasms.
7. Claimant alleged multiple mental disabling impairments including depression, anxiety, PTSD, and learning disability.
8. At the time of hearing, Claimant was 49 years old with a [REDACTED], birth date; was 5'9½" in height; and weighed 220 pounds.
9. Claimant completed high school, attended some college and has a work history of fast food, temp agencies and 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.

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 multiple physical and mental impairments including COPD, asthma, arthritis, abdominal pain from removal of left adrenal gland, sleep apnea, muscle spasms, depression, anxiety, PTSD and learning disability. While some older medical records were submitted and have been reviewed, the focus of this analysis will be on the more recent medical evidence.

A November 26, 2012, right knee x-ray showed minimal degenerative arthritic change in the right knee.

Claimant was hospitalized July 4-10, 2013, for acute COPD exacerbation, acute respiratory failure secondary to COPD exacerbation, history of hypertension, possible obstructive sleep apnea, GERD, and history of nicotine abuse- quit 3 weeks ago.

A July 25, 2013, interpretation of pulmonary function test indicated moderate obstructive ventilator defect associated with air trapping. There was decreased diffusion capacity that is consistent with the degree of obstruction, but it was also noted that the ongoing smoking habit was likely contributing to the diminished diffusion capacity as well. The history indicated Claimant was currently smoking about one third of a pack of cigarettes per day.

A July 31, 2013, office progress note from the pulmonary consultant indicated moderate to severe COPD with significant air trapping, current tobacco use, history of childhood asthma, recent hospitalization for acute respiratory failure, GERD, and obstructive sleep apnea intolerant of C-Pap historically.

On December 17, 2013, Claimant was seen in the Emergency Department for abdominal pain. Diagnoses were nausea and vomiting as well as diarrhea.

On December 19, 2013, Claimant was seen in the Emergency Department for left hip pain after a fall. Diagnosis was contusion of hip. The left hip x-ray was negative.

From the primary care provider's office, a February 5, 2014 office visit note indicated diagnosis of asthma, hypertension, musculoskeletal pain, GERD, and depression. Claimant's asthma and heartburn were noted to be controlled on medications. The assessment/plan portion also indicated Claimant requested Norco for knee pain and pain related to foot calluses. Referrals were made to podiatry and an orthopedic surgeon. Earlier office visit notes date back to March 2012, and document diagnosis/treatment of multiple conditions including: asthma, upper respiratory infection, bronchitis, shortness of breath, cough, cold symptoms, sleep apnea follow up, musculoskeletal pain, right knee pain, tooth pain, acid reflux, GERD, elevated blood sugar, smoking, and benign hypertension. Asthma exacerbations were treated April 4, 2013, and July 16, 2013. The notes also indicate Claimant received cortisone injections for the knee pain from another doctor.

A February 20, 2014, weight bearing right foot x-ray was done for a re-check of bunionectomy done August 13, 2013. It showed no appreciable interval change since the prior examination August 21, 2013.

Claimant was hospitalized March 18, 2014, for acute exacerbation of asthmatic bronchitis, acute on chronic hypoxic respiratory failure, history of hypertension, history of GERD, and history of obstructive sleep apnea. It was noted that there had been a fire in Claimant's apartment building and the paramedics noticed Claimant was having difficulty breathing, so she was brought to the emergency room. Claimant was admitted and was being treated with IV steroids, steroid breathing treatments, and oxygenation but left the same day against medical advice.

An April 2, 2014, operative report from a video bronchoscopy indicates there were mucosal changes consistent with diffuse, severe chronic bronchitis, mucosal granularity noted over the true vocal cords, and minimal mucosal irregularity seen in the anterior basilar segmental bronchus of the left lower lobe.

An April 8, 2014, chest CT was negative, but it was noted that there were densities scattered throughout the liver likely representing cysts, one of which had increased in size from a July 2008 comparison.

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 right knee arthritis/pain, COPD, asthma, chronic bronchitis, hypertension, GERD, obstructive sleep apnea, nausea/vomiting, diarrhea, left hip contusion, depression, foot calluses, bunion, and likely liver cysts.

Based on the objective medical evidence, considered listings included: 1.00 Musculoskeletal System, 3.00 Respiratory System, and 12.00 Mental Disorders.

Claimant's Authorized Hearing Representative asserted Claimant met listings 3.02 and 3.03B.

Claimant was closest to meeting 3.03 B, asthma attacks in spite of prescribed treatment and requiring physician intervention, occurring at least once every 2 months or at least six times a year. Each in-patient hospitalization for longer than 24 hours for control of asthma counts as two attacks, and an evaluation period of at least 12 consecutive months must be used to determine the frequency of attacks. The records document: hospitalization July 4-10, 2013 for COPD exacerbation; primary care doctor treatment of asthma exacerbations April 4, 2013 and July 16, 2013; and hospital admission March 18, 2014 for acute exacerbation of asthmatic bronchitis, but leaving against medical advice the same day. While it was asserted that Claimant also had respiratory problems during the December 2013 Emergency Department visits, the hospital records do not include any respiratory conditions in the primary diagnoses for these visits. Further, it was noted that shortness of breath was denied during both the December 2013 emergency department visits. Thus, the records only show a countable total of 5 documented attacks requiring physician intervention within a year. Further, the January 7, 2014 office visit note from the primary care provider noted Claimant appeared to be having some difficulty following instruction on asthma control.

Regarding listing 3.02, chronic pulmonary insufficiency, to meet 3.02 A or B, with a height of 69 inches, an FEV1 of 1.45 or less or a FVC of 1.65 or less is required. The July 25, 2013, pulmonary function test documented a height of 69 inches, an FEV1 of 1.65 and FVC of 2.74.

Ultimately, 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 right knee arthritis/pain, COPD, asthma, chronic bronchitis, hypertension, GERD, obstructive sleep apnea, nausea/vomiting, diarrhea, left hip contusion, depression, foot calluses, bunion, and likely liver cysts. Claimant's testimony indicated she can walk less than one minute, stand 2-3 minutes, sit 30 minutes, and lift a gallon of milk. Regarding anxiety and depression, Claimant's testimony described symptoms including crying spells, being overwhelmed, panic attacks, and a short temper. However, Claimant's testimony regarding the severity of her limitations is not fully supported by the medical evidence and found only partially credible. After review of the entire record it is found, at this point, that Claimant maintains the residual functional capacity to perform limited sedentary work as defined by 20 CFR 416.967(a). Limitations would include avoidance of pulmonary irritants.

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 has a work history of fast food, temp agencies and factory work. As described by Claimant, these jobs required primarily standing during the work shift. 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 some college and has a work history of fast food, temp agencies and 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 right knee arthritis/pain, COPD, asthma, chronic bronchitis, hypertension, GERD, obstructive sleep apnea, nausea/vomiting, diarrhea, left hip contusion, depression, foot calluses, bunion, and likely liver cysts. As noted above, Claimant maintains the residual functional capacity to perform limited sedentary work as defined by 20 CFR 416.967(a). Limitations would include avoidance of pulmonary irritants. Even considering these limitations, significant jobs would still exist in the national economy.

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, specifically Rule 201.21, Claimant is found not disabled at Step 5.

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 not disabled for purposes of the MA benefit program.

DECISION AND ORDER

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



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

Date Signed: September 23, 2014

Date Mailed: September 23, 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

CL/hj

cc:

