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

IN THE MATTER OF:

[redacted]

Reg. No.: 201431044
Issue No.: 2009, 4009
Case No.: [redacted]
Hearing Date: July 6, 2011
County: Eaton County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION PURSUANT TO CIRCUIT COURT REMAND

After due notice, a telephone hearing was held on July 6, 2011, from Lansing, Michigan, pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. Participants on behalf of Claimant included [redacted], [redacted], and [redacted] of [redacted], [redacted] Participants on behalf of the Department of Human Services (Department) included [redacted] and [redacted].

On October 28, 2011, the Michigan Administrative Hearing System (MAHS) upheld the Department's denial of Medical Assistance (M.A.) before June 26, 2010, based on a finding that the Claimant was not disabled. On November 30, 2011, the Michigan Administrative Hearing System (MAHS) received the Claimant's request for rehearing/reconsideration. On January 12, 2012, the Michigan Administrative Hearing System (MAHS) dismissed the Claimant's request for a rehearing/reconsideration. On February 9, 2012, the Claimant submitted a Claim of Appeal to the 56th Judicial Circuit Court of Eaton County.

On August 22, 2012, the Hon. Thomas S. Eveland, Circuit Court Judge for Eaton County, entered an opinion which remanded the matter back to the Michigan Administrative Hearing system, specifically ordering the following:

> While the reviewing court should give deference to an ALJ's decision, this ALJ decision misapplies regulations and rulings by failing to give "good reasons" in the decision explaining why [redacted] [treating physician] opinion should not be given controlling weight, and by erroneously applying a higher burden upon [redacted] than required by the vocational rules. Under MCL 24.306, these errors require the court to remand this case for further consideration based upon this opinion.

Further, the Circuit Court did not retain jurisdiction of the matter, but dismissed the Petition for Review.

ISSUE

Did the Department of Human Services (Department) properly determine that the Claimant did not meet the disability standard for Medical Assistance (MA-P) with retroactive benefits as of May 1, 2009, 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. On May 8, 2009, the Claimant submitted an application for Medical Assistance (MA) based on disability.

2. On August 8, 2009, the Claimant requested State Disability Assistance (SDA) benefits in addition to Medical Assistance (MA).

3. On October 26, 2009, the Medical Review Team (MRT) determined that the Claimant did not meet the disability standard for Medical Assistance (MA-P) because it determined that she is capable of performing past relevant work despite her impairments.

4. On November 19, 2010, the Department sent the Claimant notice that it had denied the application for assistance.

5. On February 19, 2010, the Department received the Claimant's hearing request, protesting the denial of disability benefits.

6. On March 22, 2011, the State Hearing Review Team (SHRT) determined that the Claimant was eligible for Medical Assistance (MA) and State Disability Assistance (SDA) effective June 27, 2010, but denied retroactive Medical Assistance (MA) before June 27, 2010.

7. On April 5, 2011, the Michigan Administrative Hearing System (MAHS) issued a Summary Order of Partial Disposition based on the State Hearing Review Team (SHRT) decision and ordered the Department to implement the SHRT eligibility determination.

8. At the July 6, 2011, administrative hearing, the Claimant's representative stipulated that Medical Assistance (M.A.) and retroactive Medical Assistance (MA) were being requested effective May 1, 2009.

9. The Claimant's date of birth is June 28, 1955.

10. Claimant is 65 inches tall.

11. The Claimant graduated from boarding school and did not report any history of special education or a learning disorder.

12. The Claimant was not engaged in substantial gainful activity at any time relevant to this matter.

13. The Claimant has past relevant work experience as a secretary where she worked without pay for 40 hours a week, which is considered unskilled work.

14. The Claimant has the residual functional capacity to perform sedentary work.

15. The Claimant's disability claim is based on arthritis, back pain, herniated discs, chronic obstructive pulmonary disease, asthma, aneurisms, and rheumatoid arthritis.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

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 MCL 400.10 et seq. and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. 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.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance and State Disability Assistance (SDA) programs. Under SSI, disability is defined as:

> …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.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order.

STEP 1

Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is not disabled.

At step 1, a determination is made on whether the Claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity"

is work activity that involves doing significant physical or mental activities (20 CFR 404.l572(a) and 4l6.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.l572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, she is not disabled regardless of how severe her physical or mental impairments are and regardless of her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

The Claimant reported on her application for assistance that she was not working and this fact was not disputed by the Department. There is no evidence on the record that the Claimant was engaging in substantial gainful activity at the time of her application. Therefore, this Administrative Law Judge finds based on the evidence on the record that the Claimant was not engaged in substantial gainful activity during the period Medical Assistance (MA) was requested and is therefore not disqualified from receiving disability at Step 1.

STEP 2

Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is not disabled.

At step two, a determination is made whether the Claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404. l520(c) and 4l6.920(c)). 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. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1521 and 416.921. If the Claimant does not have a severe medically determinable impairment or combination of impairments, she is not disabled. If the Claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The Claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months, or result in death.

The Claimant's date of birth is June 28, 1955. The Clamant is 65 inches tall. The Claimant alleges disability due to arthritis, back pain, herniated discs, chronic obstructive pulmonary disease, asthma, aneurisms, and rheumatoid arthritis.

A psychologist conducted a psychological evaluation on September 25, 2009, and issued the following determinations in a report:

> The Claimant socialized with her children and her grandchildren. The Claimant enjoys reading and using the computer. The Claimant has reduced self-esteem. The Claimant has normal motor activity. The Claimant suffers from a moderately severe levels of depression as

> determined by the Beck Depression Inventory test. The Claimant is oriented to time, place, and person. The Claimant exhibited low-average capabilities for general fund of information. The psychologist diagnosed the Claimant with cognitive disorder secondary to aneurysms, depressive disorder, nicotine dependence, and alcohol dependence in remission. The psychologist found the Claimant to have moderate symptoms and moderate difficulty in social and occupational functioning.

The Claimant was admitted for inpatient treatment for bilateral pneumonia and exacerbation of chronic obstructive pulmonary disease on May 1, 2009. The Claimant was discharged after being relieved of her symptoms on May 6, 2009, after treatment with a nebulizer, steroids, antibiotics, and bronchoscopy.

Testing ordered by the Claimant's treating physician found her to have a forced vital capacity (FVC) measured in liters of air at body temperature and pressure saturated (LBTSP) of 2.01 L before bronchodilation treatment and 3.22 L post bronchodilation treatment. The Claimant was also found to have a forced expiratory volume in 1 second (FEV1) measured in liters of air at body temperature and pressure saturated (LBTSP) of 1.53 L before bronchodilation treatment and 2.63 L bronchodilation dilation treatment.

The report of a treating physician issued on June 6, 2009, that the Claimant is capable of lifting less than 10 pounds occasionally, and standing less than 2 hours in an 8-hour workday. The Claimant's treating physician found her to have no mental limitations.

A consultative examination conducted on September 15, 2009, indicates that the Claimant has been diagnosed with chronic obstructive pulmonary disease. The Claimant has a history of aneurysm repair. The Claimant was diagnosed by her treating physician with necrotizing fasciitis. The Claimant has a history of gastric bypass surgery for obesity. The Claimant's treating physician diagnosed the Claimant with arthritis.

The evidence on the record indicates that the Claimant's treating physician has diagnosed her with chronic obstructive pulmonary disease (COPD), which has resulted in significant impairments to her breathing and ability to perform work activities such as lifting, standing, and walking. The reports of this treating physician have greater evidentiary weight than other sources. Therefore, this Administrative Law Judge finds a severe physical impairment that has more than a de minimus effect on the Claimant's ability to perform work activities. The Claimant's impairments have lasted continuously, or are expected to last for twelve months.

STEP 3

Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4.

At step three, a determination is made whether the Claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d),

404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the Claimant'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 404.1509 and 416.909), the Claimant is disabled. If it does not, the analysis proceeds to the next step.

The Claimant's impairment failed to meet the listing for arthritis or rheumatoid arthritis under section 14.09 Inflammatory Arthritis because the objective medical evidence does not demonstrate an impairment involving a weight-bearing joint and resulting in an inability to ambulate effectively. The objective evidence does not support a finding that the Claimant lacks the ability to perform fine and gross movements with each upper extremity. The Claimant has a history of necrotizing fasciitis, but the Claimant's treating physician determined on Jun 5, 2009, that the Claimant is capable of grasping, reaching, and fine manipulation with both hands.

The Claimant's impairment failed to meet the listing for back pain or herniated discs under section 1.04 Disorders of the spine because the objective medical evidence does not demonstrate that the Claimant suffers from nerve root compression resulting in loss of motor strength or reflexes, or resulting in a positive straight leg test. The objective medical evidence does not demonstrate that the Claimant has been diagnosed with spinal arachnoiditis. The objective medical evidence does not support a finding that the Claimant's impairment has resulted in an inability to ambulate effectively.

The Claimant's impairment failed to meet the listing for chronic obstructive pulmonary disease (COPD) under section 3.02 Chronic pulmonary insufficiency because the objective medical evidence does not demonstrate a finding of forced expiratory volume in 1 second measured in liters of air at body temperature and pressure saturated (LBTSP) equal to or less than 1.25 L for a person that is 65 inches tall. The objective medical evidence does not demonstrate a finding of forced vital capacity measured in liters of air at body temperature and pressure saturated (LBTSP) equal to or less than 1.45 L for a person that is 65 inches tall. The evidence on the record does not support a finding that the Claimant meets or equals the listing for Chronic pulmonary insufficiency.

The Claimant's impairment failed to meet the listing for asthma under section 3.03 Asthma because the objective medical evidence does not support a finding that the Claimant condition meets or equals the criteria for section 3,02 Chronic pulmonary disease. The evidence on the record does not support a finding that the Claimant suffers from asthma attacks in spite of prescribed treatment and requires physician intervention at least once every 2 months or at least six times a year.

The Claimant's impairment failed to meet the listing for aneurysm under section 4.10 Aneurysm of aorta or major branches because the objective medical evidence does not demonstrate that the Claimant suffers from an aneurysm with dissection not controlled by prescribed treatment. The evidence on the record indicates that the Claimant underwent a craniotomy for aneurysm in 2004 and in 2005. The objective medical evidence does not support a finding that the Claimant continues to suffer from an aneurysm that has increased in size, or has resulted in the compression of blood supply to a vital organ. The evidence on the record does not support a finding that the Claimant suffers from neurological complications due to her aneurysm.

The medical evidence of the Claimant's condition does not give rise to a finding that she would meet a statutory listing in federal code of regulations 20 CFR Part 404, Subpart P, Appendix 1.

STEP 4

Can the client do the former work that she performed within the last 15 years? If yes, the client is not disabled.

Before considering step four of the sequential evaluation process, a determination is made of the Claimant's residual functional capacity (20 CFR 404.1520(e) and 4l6.920(c)). An individual's residual functional capacity is her ability to do physical and mental work activities on a sustained basis despite limitations from her impairments. In making this finding, the undersigned must consider all of the Claimant's impairments, including impairments that are not severe (20 CFR 404.l520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, a determination is made on whether the Claimant has the residual functional capacity to perform the requirements of her past relevant work (20 CFR 404.l520(f) and 416.920(f)). The term past relevant work means work performed (either as the Claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the Claimant to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the Claimant has the residual functional capacity to do her past relevant work, the Claimant is not disabled. If the Claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium, and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor... 20 CFR 416.967.

> 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. 20 CFR 416.967(a).
>
> 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.... 20 CFR 416.967(b).
>
> 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. 20 CFR 416.967(c).
>
> 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. 20 CFR 416.967(d).

A treating source's medical opinions are given controlling weight as defined in 20 CFR 404.1527(d)(2) and 416.927(d)(2), when it is well supported by medically acceptable clinical and laboratory diagnostic techniques. Social Security Rule 96-2p (SSR-96-2p).

The Claimant was admitted for inpatient treatment for bilateral pneumonia and exacerbation of chronic obstructive pulmonary disease on May 1, 2009.

On June 5, 2009, a Medical Examination Report (DHS-49) was completed by a Doctor of Osteopathic after having treated the Claimant for three and a half years. This report indicates that the Clamant is capable of lifting less than 10 pounds occasionally, and that she is capable of standing and/or walking less than 2 hours in an 8-hour work day.

On September 15, 2009, a Doctor of Medicine completed a consultative examination of the Claimant after she presented herself for FIA evaluation. This report indicates that the Claimant has significant weakness and slow range of motion in the left upper extremity.

On July 6, 2011, the Claimant testified under oath that while recovering from a hospitalization on May1, 2009, she was unable to lift objects weighing five pounds, or stand for stand for period of up to 6 hours.

After careful consideration of the entire record, this Administrative Law Judge finds that the Claimant has the residual functional capacity to perform sedentary work as defined in 20 CFR 404.1567 and 416.967.

The evidence on the record indicates that the Claimant was limited past relevant work experience. The Claimant worked for her husband as a secretary for approximately four or five years at some point in their marriage. Based on the limited testimony in the record and as a matter of judicial notice, this Administrative Law Judge finds that the Claimant's prior work fits the definition of unskilled and light work.

There is no evidence upon which this Administrative Law Judge could base a finding that the Claimant is able to perform work substantially similar to work performed in the past.

STEP 5

At Step 5, the burden of proof shifts to the Department to establish that the Claimant has the Residual Functional Capacity (RFC) for Substantial Gainful Activity.

Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, client is not disabled.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), a determination is made whether the Claimant is able to do any other work considering her residual functional capacity, age, education, and work experience. If the Claimant is able to do other work, she is not disabled. If the Claimant is not able to do other work and meets the duration requirement, she is disabled.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969.

During the period the Claimant is requesting Medical Assistance (MA), the Claimant was a person closely approaching advanced age, 50-54, with a high school education, and a history of unskilled work. Based on the objective medical evidence of record Claimant has the residual functional capacity to perform sedentary work. The Claimant is therefore found to be disabled for the purposes of Medical Assistance (M.A.) benefits using Vocational Rule 202.13 as a guideline.

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 ☐ not disabled for purposes of the Medical Assistance (M.A.) benefits, for the period of May 1, 2009, through June 27, 2010.

DECISION AND ORDER

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 that the Department did not act in accordance with Department policy when it determined that the Claimant was not disabled before June 27, 2010.

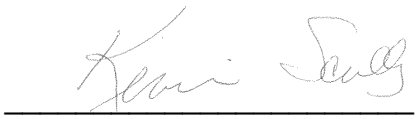
Accordingly, the Department's decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING 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 determination of the Claimant's eligibility for Medical Assistance (MA) as of May 1, 2009.

2. Provide the Claimant with a Notice of Case Action (DHS-1605) describing the Department's revised eligibility determination.

3. Issue the Claimant any retroactive benefits she may be eligible to receive, if any.



Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: April 8, 2014

Date Mailed: April 8, 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:

Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

KS/hj

cc: [redacted]