

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2014-3339  
Issue No(s).: 2009  
Case No.: [REDACTED]  
Hearing Date: February 19, 2014  
County: Mecosta 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 February 19, 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 Supervisor and Hearing Coordinator, and [REDACTED] Eligibility Specialist.

**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 June 24, 2013, Claimant applied for Medicaid (MA-P) with retroactive coverage for the months of March, April and May 2013.
2. On August 20, 2013, the Medical Review Team (MRT) found Claimant not disabled.
3. On August 21, 2013, the Department notified Claimant of the MRT determination.
4. On October 8, 2013, the Department received Claimant's timely written request for hearing.
5. On November 26, 2013, the State Hearing Review Team (SHRT) found Claimant not disabled.

6. Claimant alleged physical disabling impairments due to low back pain, muscle spasms, heart condition, and thyroid condition.
7. Claimant did not allege any mental disabling impairments.
8. At the time of hearing, Claimant was 53 years old with an [REDACTED], birth date; was 5'7" in height; and weighed 225 pounds.
9. Claimant has a high school diploma, completed one semester of college, and has an employment history including gas station/convenience store clerk, cook, general laborer on factory line, carpenter's helper, and housecleaning.
10. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

### **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.

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 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 low back pain, muscle spasms, heart condition, and thyroid condition.

On June 14, 2013, Claimant's Family Practice physician completed a DHS-49 Medical Examination Report. The doctor listed the diagnosis codes for unspecified acquired hypothyroidism (244.9) and heart failure unspecified (248.9). The doctor's exam findings included fatigue and palpitations. The physical imitations were standing and/or walking less than 2 hours in an 8 hour work day as well as lifting/carrying less than 10 pounds frequently and up to 20 pounds occasionally in an 8 hour day. Clinical notes from Claimant's Family Practice physician document diagnoses of hypothyroidism and heart disease. The clinical notes documented consistent complaints of palpitations and weakness. Once complaint of cramping over the last few weeks was documented regarding the musculoskeletal system on March 19, 2012, but the musculoskeletal exam findings were normal on that date, normal on subsequent exams in the clinical notes, and normal on the DHS-49E Medical Examination Report. Abnormal lab report results included low thyroid stimulating hormone (TSH). (Exhibit A, pages 53-54 and 62-85)

Claimant's cardiologist provided records, including a February 4, 2013 office visit note. Complaints included chest pain, palpitations, weakness, being tired, and dizziness. A prior cath showing myocardial LAD bridge, but no coronary disease was noted. (Exhibit A, pages 87-89) A March 12, 2013 Echocardiography report documented an ejection fraction of 65% and grade I diastolic dysfunction. (Exhibit A, pages 102-105) An April 16, 2013 Nuclear Myocardial Perfusion Imaging with Exercise report documented: an ejection fraction of 77%; no evidence of ischemia; normal stress exercise, myocardial perfusion images, wall motion and left ventricular function. (Exhibit A, pages 90-94)

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). The objective medical evidence did not document the low back pain and frequent, severe muscle spasm impairments alleged by Claimant.

As summarized above, Claimant has presented medical evidence establishing heart and thyroid conditions that have resulted in some physical limitations of 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 ability to perform 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 treatment/diagnoses of hypothyroidism and heart impairment.

Listing 4.00 (cardiovascular system) was considered in light of the objective evidence. The objective medical evidence did not document findings sufficient to meet or equal the systolic failure or diastolic failure requirements of listing 4.02 Chronic Heart Failure or any other cardiovascular system listing.

Listing 9.00 (endocrine disorders) was also considered in light of the objective evidence. This listing directs that evaluation of thyroid-related changes in blood pressure and heart rate that cause arrhythmias or other cardiac dysfunction under 4.00; thyroid-related weight loss under 5.00; hypertensive cerebrovascular accidents (strokes) under 11.00; and cognitive limitations, mood disorders, and anxiety under 12.00.

As noted above, Claimant did not meet or equal the cardiac dysfunction listings under 4.00 (cardiovascular system).

Listings 5.08 and 5.06B(5) address weight loss. Listing 5.08 is met when there is weight loss, despite continuing treatment as prescribed, with BMI of less than 17.50 calculated on at least two evaluations at least 60 days apart within a consecutive 6-month period. Listing 5.06B(5) is met when involuntary weight loss of at least 10 percent from baseline, as computed in pounds, kilograms, or BMI, present on at least two evaluations at least 60 days apart. Clinical notes from Claimant's Family Practice physician document weights of 247 pounds on March 19, 2012, 232 pounds with a BMI of 36.3 on June 11, 2012, and 168 pounds with a BMI of 26.3 on February 27, 2013. (Exhibit A, pages 68-70) The cardiology records document weights of 257 pounds with a BMI of 40 on June 30, 2011 and 226 pounds with a BMI of 35.5 on February 4, 2013. (Exhibit A, pages 86-88) The objective medical evidence did not establish a BMI of less than 17.50. While some significant fluctuations in weight were documented, they did not establish weight loss of at least 10 percent from baseline present on at least two evaluations at least 60 days apart. The objective medical evidence did not establish weight loss that met or equaled the criteria of the 5.00 listings.

The objective medical evidence did not establish sensory motor aphasia resulting in ineffective speech or communication nor significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station to meet or equal the central nervous system vascular accident listing 11.04, nor any other 11.00 listing.

The objective medical evidence did not establish any cognitive limitations, mood disorders, and anxiety to meet or equal any of the 12.00 listings.

Ultimately, the objective medical records establish some physical impairments; however, the evidence does not meet the intent and severity requirements of a 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.*

In this case, the evidence confirms treatment/diagnoses of hypothyroidism and heart disease. As noted above, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). The objective medical evidence did not document the low back pain and frequent, severe muscle spasm impairments alleged by Claimant. The objective medical evidence also does not support the severity of most of the limitations Claimant described. Therefore, Claimant's testimony cannot be found fully credible.

Further, the severity of the limitations indicated by Claimant's Family Practice physician are also not supported by the objective medical evidence. Specifically, the limitations of: sitting/standing less than 2 hours in an 8 hour work day; lifting less than 10 pounds frequently and up to 20 pounds occasionally are not found fully credible. For example, the cardiac testing reports document ejection fractions of 65% and 77%, there was no evidence of ischemia, and the results were also normal regarding stress exercise, myocardial perfusion images, wall motion and left ventricular function.

After review of the entire record, it is found, at this point, that Claimant maintains the residual functional capacity to perform at least unskilled, light work as defined by 20 CFR 416.967(b).

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 prior employment included working as a clerk at a gas station/convenience store, which Claimant described as involving mostly standing and walking, lifting up to 10 pounds frequently and up to 30 or 40 pounds. The SHRT decision documents that Claimant's past work as a clerk is considered semi-skilled light work. As noted above, Claimant did not allege any mental impairments. In light of the entire record, and Claimant's RFC at the light exertional level (see above), it is found that Claimant is able to perform past relevant work as a clerk. Accordingly, Claimant is found not disabled at Step 4.

Further, Claimant would also be found disabled at Step 5 based on the RFC of light work if the sequential analysis was continued.

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 53 years old and, thus, considered to be closely approaching advanced age for MA-P purposes. Claimant has at least a high school education with an employment history of semi-skilled light work in the past 15 years. 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).


In this case, the objective findings confirm treatment/diagnoses of hypothyroidism and heart disease. However, the objective medical evidence does not support the severity of most of the limitations Claimant described nor the severity of the limitations indicated by Claimant's Family Practice physician. In light of the foregoing, it is found that Claimant maintains the residual functional capacity for work activities on a regular and continuing basis to meet the physical and mental demands required to perform at light work as defined in 20 CFR 416.967(b).

After review of the entire record, and in consideration of the Claimant's age, education, work experience even if the skills were found to be non-transferable, RFC, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 202.14, Claimant would be 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**.

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

Date Signed: March 12, 2014

Date Mailed: March 12, 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

20143339/CL

CL/hj

cc:

