

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2014-5361  
Issue No(s): 2009  
Case No.: [REDACTED]  
Hearing Date: May 1, 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, a telephone hearing was held on May 1, 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 May 20, 2013, Claimant applied for Medicaid (MA-P) and retroactive MA-P.
2. On August 26, 2013, the Medical Review Team (MRT) found Claimant not disabled.
3. On August 29, 2013, the Department notified Claimant of the MRT determination.

4. On October 7, 2013, the Department received Claimant's timely written request for hearing.
5. On November 22, 2013, and June 20, 2014, the State Hearing Review Team (SHRT) found Claimant not disabled.
6. Claimant alleged physical disabling impairments of arthritis, knee/back/feet pain, and COPD.
7. Claimant alleged mental disabling impairments due to PTSD.
8. At the time of hearing, Claimant was 51 years old with an [REDACTED], birth date; was 5'7" in height; and weighed 210 pounds.
9. Claimant completed the 9th grade and has a work history of only part time 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 arthritis, knee/back/feet pain, COPD, and PTSD. While some older medical records were submitted and have been reviewed, the focus of this analysis will be on the more recent medical evidence.

On June 27, 2012, Claimant was seen in the Emergency Department for knee pain and a pruritic rash. The physical exam noted minimal left knee swelling, full range of motion, minimally tender in joint line and medially, pain with valgus stress, no pain with valgus. The psychiatric evaluation was normal.

Claimant was hospitalized January 24-26, 2013, for atypical chest pain most likely musculoskeletal in origin, shortness of breath on exertion due to COPD and active smoking, osteoarthritis of the knee, tobacco dependence, and obesity with possible sleep apnea. It was noted that Claimant reported her dog lays on her chest every night. Claimant was strongly encouraged to quit smoking and promised that she would.

A February 14, 2013, record from Claimant's pulmonologist documented diagnosis and treatment for asthmatic bronchitis, allergic rhinitis, active smoker, depression/anxiety, neuropathy, osteoarthritis, chronic back pain, history of cervical cancer status post partial hysterectomy, and history of rectal bleeding. Claimant reported shortness of breath with exertion. Shortness of breath was associated with productive cough, and wheezing. It was noted that Claimant was currently working as a live in provider for an 80 year old person taking care of him.

A March 7, 2013 letter documents a referral for bilateral galactorrhea noting that Claimant stated when she stops examining her breasts and expressing the milk, it does seem to go away. It would be considered normal prolactinemic galactorrhea. It was also noted that marijuana can lead to this and she may want to consider cutting back on it.

On April 8, 2013, Claimant was seen in the Emergency Department for an upper respiratory infection and acute exacerbation of chronic obstructive airway disease.

An April 11, 2013, DHS-49 Medical Examination Report documented diagnoses of COPD, depression and back pain. Exam findings indicate knee pain right greater than left. Physical limitations included lifting up to 10 pounds frequently and 25 pounds occasionally, standing or walking less than 2 hours in an 8 hour work day, sitting about 6 hours in an 8 hour work day, and unable to operate foot/leg controls. It was marked that Claimant had no mental limitations. A DHS-54 A Medical Needs form was also completed indicating Claimant did not need assistance with personal care activities but would be unable to work. It was noted Claimant cannot walk long distances due to COPD and dyspnea.

On April 29, 2013, Claimant was seen in the Emergency Department for pain of nose, contusion of face, and sinusitis. This started about one week prior. Claimant had been in a fight with a few girls and was hit in the nose and face.

A June 18, 2013, office progress note from Claimant's pulmonologist documented diagnosis and treatment for asthmatic bronchitis, active smoker, allergic rhinitis, depression/anxiety, neuropathy, osteoarthritis, chronic back pain, history of cervical cancer status post partial hysterectomy, and history of rectal bleeding. The asthmatic bronchitis was estimated to be moderate in severity based on the most recent pulmonary function testing. Insurance issues with obtaining some inhaler medications were noted, and nebulized treatments were prescribed instead. Shortness of breath was associated with worsening productive cough, wheezing and chest pain. Claimant had multiple episodes with hemoptysis. It was noted that Claimant continued to smoke.

On June 18, 2013, Claimant was seen in the Emergency Department for lumbosacral radiculopathy and sciatica. Neurologic and Musculoskeletal findings included decreased sensation in the L2 distribution on left, tenderness in the left glutes in sciatic nerve region. Lumbosacral spine x-ray showed no acute lumbosacral abnormality and mild progression of degenerative disc disease L3-S1.

A June 25, 2013, DHS-49 Medical Examination Report documented diagnoses of COPD, depression, lower back pain, as well as knee and leg pain. Exam findings included: uses braces on both knees, back pain, depression, inability to focus, mood swings, and racing thoughts. Physical limitations included lifting up to 10 pounds frequently and 25 pounds occasionally, standing or walking less than 2 hours in an 8 hour work day, sitting about 6 hours in an 8 hour work day, and unable to operate foot/leg controls. Mental limitation with sustained concentration as also marked.

A September 11, 2013, office progress note from Claimant's pulmonologist documented diagnosis and treatment for asthmatic bronchitis, active smoker, allergic rhinitis, depression/anxiety, neuropathy, osteoarthritis, chronic back pain, history of cervical cancer status post partial hysterectomy, and history of rectal bleeding. The asthmatic bronchitis was estimated to be moderate in severity based on the most recent pulmonary function testing. Shortness of breath was associated with worsening productive cough, wheezing and chest pain. Claimant was smoking ½ pack per day.

An April 14, 2014 office visit record documented diagnosis and treatment for chronic airway obstruction, dizziness and hypertension. Smoking cessation counseling was completed. The listing of medications included a knee brace, TED stocking, zolof, neurontin, hydrochlorothiazide, hydrocortisone, flonase, qvar, ultram, cetirizine HCL, potassium chloride, atrovent HFA, albuterol sulfate inhaler and nebulizer, promethazine HCL, diclofenac sodium, and pamelor.

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 osteoarthritis of knees, COPD, obesity, asthmatic bronchitis, active smoker, allergic rhinitis, depression/anxiety, neuropathy, osteoarthritis, chronic back pain, bilateral galactorrhea, upper respiratory infection, face injuries, sinusitis, hypertension, lumbosacral radiculopathy, and sciatica.

Based on the objective medical evidence, considered listings included: 1.00 Musculoskeletal System, 3.00 Respiratory System, 4.00 Cardiovascular Systems, 11.00 Neurological, 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 osteoarthritis of knees, COPD, obesity, asthmatic bronchitis, active smoker, allergic rhinitis, depression/anxiety, neuropathy, osteoarthritis, chronic back pain, bilateral galactorrhea, upper respiratory infection, face injuries, sinusitis, hypertension, lumbosacral radiculopathy, and sciatica. Claimant's testimony indicated she can walk 10 minutes, stand 7-8 minutes, sit 15-20 minutes, and was told she cannot lift over 10 pounds. Claimant's testimony regarding her limitations is not fully supported by the medical evidence and found only partially credible. Claimant's continued smoking, despite numerous documented counseling regarding smoking cessation, likely affects her breathing difficulties. However, the records also repeatedly document knee and back impairments. The two DHS-49 Medical Examination Reports are also found partially credible. Specifically both indicate standing/walking restrictions that would prevent light work but that Claimant would be able to sit 6 hours of an 8 hour work day. After review of the entire record it is found, at this point, that Claimant maintains the residual functional capacity to perform 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 testified she has a work history of only part time work. In light of the entire record and Claimant's RFC (see above), it is found that Claimant is not able to perform any 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 51 years old and, thus, considered to be closely approaching advanced age for MA-P purposes. Claimant testified she completed the 9th grade and has a work history of only part time 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 osteoarthritis of knees, COPD, obesity, asthmatic bronchitis, active smoker, allergic rhinitis, depression/anxiety, neuropathy, osteoarthritis, chronic back pain, bilateral galactorrhea, upper respiratory infection, face injuries, sinusitis, hypertension, lumbosacral radiculopathy, and sciatica. As noted above, Claimant maintains the residual functional capacity to perform 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, specifically Rule 201.09, Claimant is found 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 disabled for purposes of the MA benefit program.

### **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 May 20, 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 October 2015.

2. The Department shall supplement for lost benefits (if any) that Claimant was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.



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

Date Signed: September 12, 2014

Date Mailed: September 12, 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: 

