

2. On February 20, 2014, the Medical Review Team denied Claimant's request.
3. On May 22, 2014, Claimant submitted to the Department a request for hearing.
4. The State Hearing Review Team (SHRT) denied Claimant's request.
5. Claimant is 49 years old.
6. Claimant completed education through a GED.
7. Claimant has no employment experience in the last 15 years at a substantial gainful employment level.
8. Claimant's limitations have lasted for 12 months or more.
9. Claimant suffers from chronic obstructive pulmonary disease, asthma, allergies, angina, anxiety, emphysema, coronary artery disease and hypertension.
10. Claimant has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.

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.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. Under SSI, 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 set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

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).

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.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of 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; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the claimant's residual functional capacity. 20 CFR 404.1520(e). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, the trier must consider all of the claimant's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the claimant has the residual functional capacity to do his/her past relevant work, then 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 step.

In the fifth step, an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Here, Claimant has satisfied requirements as set forth in steps one, two and three of the sequential evaluation. However, Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Therefore, vocational factors will be considered to determine Claimant's residual functional capacity to do relevant work.

In the present case, Claimant has been diagnosed with chronic obstructive pulmonary disease, asthma, allergies, angina, anxiety, emphysema, coronary artery disease and hypertension. Claimant has a number of symptoms and limitations, as cited above, as a result of these conditions. Claimant's treating records include the following:

██████████ Claimant was admitted to the hospital for shortness of breath. Claimant admitted to smoking but denied drug use. Claimant was discharged on ██████████ and diagnosed as suffering chronic obstructive pulmonary disease exacerbation and bronchitis.

██████████ Claimant went to the emergency room with multiple complaints. Claimant was noted to be a smoker and denied drug use. Claimant was treated and diagnosed as suffering from chronic obstructive pulmonary disease exacerbation and slip and fall with mechanical cause without signs of injury. Claimant was discharged in stable condition.

██████████ Claimant went to the emergency room for left sided chest pain. She admitted to cocaine use. Claimant indicated she used the cocaine to help stop the pain. She was counseled against drug use. Claimant was discharged and diagnosed as suffering acute left sided pleuritic chest pain, cocaine substance abuse, cachexia and very poor dentition and bronchitis. She was discharged on the same day.

██████████ Claimant went to the emergency room for difficulty breathing. Claimant was discharged and diagnosed as suffering chronic obstructive pulmonary disease exacerbation. Claimant was noted to be a well-known drug abuser. She stated she was no longer smoking; however, medical staff noted a tobacco smell.

██████████ Claimant went to the emergency room for difficulty breathing. She reported smoking and use of cocaine. Claimant was advised to quit. Claimant was discharged and diagnosed as suffering chronic obstructive pulmonary disease exacerbation.

██████████ Claimant went to the emergency room for difficulty breathing. Claimant refused admission. Claimant was discharged against medical advice and was diagnosed as suffering asthma exacerbation.

██████████ Claimant went to the emergency room for difficulty breathing. EKG results were normal. She was diagnosed as suffering exacerbation of COPD. She was discharged in stable condition. She was noted to be smoking and using cocaine.

██████████ Claimant was admitted to the hospital for shortness of breath. Claimant was diagnosed as suffering from acute chronic obstructive pulmonary disease exacerbation. Claimant was treated and discharged in fair condition ██████████
██████████

██████████ Claimant went to the emergency room for difficulty breathing. Claimant was provided medications and discharged. Claimant was noted to be smoking and using crack cocaine.

██████████ Claimant went to the emergency room for difficulty breathing. She admitted to smoking and using crack cocaine. The treating physician requested

admission of Claimant for treatment. Claimant refused treatment. Claimant was discharged against medical advice and diagnosed as suffering acute bronchitis with COPD exacerbation.

██████████ Claimant went to the emergency room for difficulty breathing. An EKG revealed normal sinus rhythm. Claimant was diagnosed as suffering dyspnea secondary to COPD exacerbation. She was discharged in stable condition. Claimant admitted to smoking and cocaine use.

██████████ Claimant was admitted to the hospital for shortness of breath. Claimant was discharged ████ ██████ ████ ██████ with the following diagnosis: obstructive chronic bronchitis with acute exacerbation. Claimant was noted to be non-compliant with medications. Claimant was treated and discharged in an improved condition. Claimant was noted to be smoking a pack of cigarettes a day and using cocaine.

██████████ Claimant was admitted for shortness of breath. Claimant's chest x-ray was stable in appearance and showed no acute process. Claimant was noted to be non-compliant with all of her medications. She was noted to be using crack and smoking. An EKG revealed normal findings. She was diagnosed with COD exacerbation and chest pain.

██████████ Claimant was admitted to hospital due to breathing problems. Diagnosis included COPD exacerbation and Coronary Artery Disease (history of). Claimant admitted to using crack and attempted to convince hospital staff she only uses crack to help her breathing. The medical records indicate she was counseled regarding smoking cessation and crack use.

██████████ Claimant was admitted to the hospital due to breathing problems. Claimant was discharged and diagnosed as suffering asthma exacerbation and COPD exacerbation. She was noted to be poorly compliant with medications and still smoking.

Claimant's AHR provided emergency department and clinical decision unit discharge summaries for the dates of ██████████ (no diagnosis), ██████████ (no diagnosis), ██████████ (COPD exacerbation) and ██████████ (no diagnosis). These documents fail to provide additional objective medical evidence other than to indicate Claimant was seen on those dates. Claimant and/or her AHR failed to present the actual medical records for review.

Claimant testified to the following symptoms and abilities: poor breathing, problems with sleeping due to angina, problems with speaking due to losing breath and voice changes, can walk less than a quarter block, can stand 30 minutes, can sit 20-30 minutes, numbness in hands, able to squat, not able to bend, hangs onto things when squatting, black outs occurring frequently back in ██████████ blackouts occurring less frequently, dizzy spells, sometimes sees spots, knees feel weak, not able to cook,

cleaning products impact her ability to breath, able to manage personal hygiene but not always able to shower due to weakness, not able to manage her own grocery shopping and not able to drive. Claimant testified she has reduced her smoking to a half pack a day as of [REDACTED] and she last used crack cocaine in [REDACTED].

Claimant's testimony regarding the severity of restriction on her abilities is found less than credible. Claimant's medical documentation fails to support the severity of restriction that Claimant alleges.

Claimant has been non-compliant with taking her prescriptions. Claimant is noted to be homeless and her inability to afford medications has been noted as an issue for the Claimant. However this Administrative Law Judge cannot ignore that, while Claimant alleges inability to afford her prescriptions, she has, however, according to her medical records and testimony, been able to maintain an ongoing smoking habit of at least a pack a day ([REDACTED]). Further, Claimant's medical records document Claimant's admitted occasional use of crack cocaine. Claimant has failed to present any evidence that she has no ability to obtain her medications from local free clinics or other free resources. Instead, the evidence demonstrates that Claimant allocates resources to maintain, as stated above, a regular smoking habit and occasional crack habit.

In addition, the medical evidence demonstrates that Claimant failed to accept and follow medical advice. Claimant was counseled on the need to stop smoking and to stop using drugs. Claimant has actively acted against this medical advice; she has continued to smoke and use crack cocaine. The undersigned notes,

The Social Security Act did not repeal the principle of individual responsibility. Each of us faces a myriad of choices in life, and the choices we make, whether we like it or not, have consequences. If the Claimant in this case chooses to drive himself to an early grave, that is his privilege - but if he is not truly disabled, he has no right to require those who pay social security taxes to help underwrite the cost of the ride." *Sias v. Secretary of Health and Human Services*, 861 F2d 475 (6th Circuit 1988).

Claimant's condition, while severe and while she has been in the emergency room and/or admitted to the hospital for COPD and breathing-related conditions, cannot be seen as meeting a listing, since Claimant has failed to follow prescribed treatment as indicated above.

The fourth step of the analysis to be considered is whether the claimant has the ability to perform work previously performed by the claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the claimant from doing past relevant work. In the present case, Claimant has no relevant employment experience to consider. 20 CFR 416.920(e).

In the final step of the analysis, the trier of fact must determine if the claimant's impairment(s) prevent the claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

1. residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and
3. the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite her limitations. 20 CFR 416.966.

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).

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).

See *Felton v DSS* 161 Mich App 690, 696 (1987). Once the claimant makes it to the final step of the analysis, the claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 732 F2d 962 (6th Cir, 1984). Moving forward, the burden of proof rests with the State to prove by substantial evidence that the claimant has the residual function capacity for SGA.

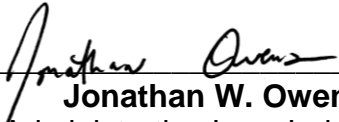
This Administrative Law Judge finds that Claimant has the residual functional capacity to perform work at least at a sedentary level. Claimant and/or her AHR have not demonstrated that Claimant's condition would persist if, at a minimum, Claimant followed prescribed medical advice to quit smoking.

Claimant is an individual of younger age. 20 CFR 416.963. Claimant has a high school equivalent education. 20 CFR 416.964. Claimant has no work experience. Federal Rule 20 CFR 404, Subpart P, Appendix 2, contains specific profiles for determining disability based on residual functional capacity and vocational profiles. Under Table I, Rule 201.18, Claimant is not disabled for purposes of the Medical Assistance program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is not medically disabled.

Accordingly, the Department's decision is hereby UPHeld.


Jonathan W. Owens
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: January 7, 2015

Date Mailed: January 7, 2015

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

JWO/pf

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]