

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-015242
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 13, 2015
County: Wayne-District 19

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 3-way telephone hearing was held on January 13, 2015, from Lansing, Michigan. Claimant, represented by [REDACTED] of [REDACTED], personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED]

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) benefit programs?

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 April 17, 2014, Claimant filed an application for MA/Retro-MA benefits alleging disability.
2. On August 11, 2014, the Medical Review Team (MRT) denied Claimant's application for MA/Retro-MA indicating Claimant was capable of performing past relevant work.
3. On October 27, 2014, the Department sent Claimant notice that her application for MA/Retro-MA had been denied.
4. On October 28, 2014, Claimant filed a request for a hearing to contest the Department's negative action.
5. Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

6. Claimant is a 46 year old woman born on [REDACTED] Claimant is 5'2" tall and weighs 128 lbs.
7. Claimant does not have a drug history. She quit smoking and drinking in November, 2014.
8. Claimant has an expired driver's license and is unable to renew it until she is seizure free for 6 months.
9. Claimant has a high school education.
10. Claimant is not currently working. She last worked in September, 2009.
11. Claimant alleges disability on the basis of a broken neck status post discectomy, cervicalgia, neuropathy, coronary artery disease, hypertension, anemia, shortness of breath, diabetes, asthma, alcohol abuse, hernia, seizures, headaches, bipolar disorder and depression.
12. Claimant's impairments have lasted, or are expected to last, continuously for a period of twelve months or longer.
13. Claimant's complaints and allegations concerning her impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (RFT).

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 CFR 416.901). DHS, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses. Michigan administers the federal Medicaid program. In assessing eligibility, Michigan utilizes the federal regulations.

Relevant federal guidelines provide in pertinent part:

"Disability" is:

. . . 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.

The federal regulations require that several considerations be analyzed in sequential order:

. . . We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further. 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). If no, the analysis continues to Step 2.
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 ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.909(c).
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 that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. Sections 200.00-204.00(f)?

5. 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? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application Claimant has the burden of proof pursuant to:

. . . You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

Medical reports should include --

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as ultrasounds, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment. 20 CFR 416.929(a). The medical evidence must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e). You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. 20 CFR 416.927(a)(1).

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).

Applying the sequential analysis herein, Claimant is not ineligible at the first step as Claimant is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a *de minimus* standard. Generally, federal courts have imposed a *de minimus* standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Claimant's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with a summary of the relevant submitted medical documentation.

In the present case, Claimant alleges disability due to a broken neck status post discectomy, cervicalgia, coronary artery disease, neuropathy, hypertension, anemia, shortness of breath, diabetes, asthma, alcohol abuse, hernia, seizures, headaches, bipolar disorder and depression.

On [REDACTED], Claimant had a cardiology consultation. She was diagnosed with coronary artery disease, hypertension, shortness of breath, and alcohol abuse.

Claimant underwent a cervical CT after a fall on [REDACTED]. The CT revealed significant facet joint arthropathy at C3-C4, a mild posterior bulge and mild bilateral facet arthropathy resulting in mild bilateral and foraminal stenosis at C5-C6, mild posterior disc bulge as well as bilateral facet joint arthropathy and bilateral spondylosis in addition to moderate bilateral neural foraminal stenosis at C6-C7, bilateral C7

spondylosis, and moderate circumferential disc bulge resulting in severe bilateral neural foraminal stenosis and mild spinal canal stenosis at C7-T1.

On [REDACTED], Claimant presented to the emergency department with nausea, vomiting and possible delirium tremens. She was shaking and also had a seizure. She was brought in for alcohol intoxication. She was referred to psychiatry for underlying history of bipolar illness as well as alcohol abuse. She was discharged on [REDACTED]

Claimant was admitted to the hospital on [REDACTED], due to alcohol intoxication. Her blood alcohol level was 0.471. Claimant stated she was going through the DT's and had seizure activity. Impression at admission was toxic alcohol ingestion with long standing history of alcoholism, electrolyte imbalance and seizure disorder. Claimant underwent a psychiatric evaluation. The psychiatrist noted Claimant was poorly kempt and withdrawn. She was fairly sedated and confused and in restraints. Her cognition seemed compromised and her insight, judgment and impulse control impaired. Diagnosis: Axis I: Delirium secondary to medication/medical condition/withdrawal, history of bipolar illness, alcohol dependence; Axis II: Deferred; Axis III: Per chart; Axis IV: Chronic mental illness; Axis V: GAF=0.

On [REDACTED], Claimant underwent an internal medicine evaluation by the disability determination service. Claimant presented with diabetes, incontinence, mental illness, seizure disorder and neuropathy. Claimant has a history of diabetes, non-insulin dependent. She is currently on medication. She has a history of incontinence and states she is being followed by an urologist. She has mental illness and depression and is taking medication and being followed by a mental health professional. She has neuropathy in her hands, feet and legs, and is seeing a neurologist. She has a seizure disorder and her last seizure was two days ago. She is seeing a neurologist. She has chronic neck pain secondary to being involved in a motor vehicle accident as a passenger. She has slight limitation of range of motion in her shoulders and states she does frequently drop items. She has difficulty turning her head on occasion but had full range of motion during the exam.

On [REDACTED], Claimant underwent a mental status examination by the disability determination service. Claimant reported that two days before the examination she was taken to the hospital due to alcohol toxicity and seizures, where she was admitted for 17 hours. She admitted to having a long history of substance abuse problems and receiving outpatient, residential, and inpatient substance abuse treatment. She received substance abuse treatment in Arizona in 1995 as well as one year of an intensive outpatient program in Arizona. She reported a history of at least five hospitalizations for psychiatric treatment. During the interview, Claimant's affect was anxious and mood was very labile. She vacillated between tearful self-depreciation and irritable anger. She was tense and anxious and verbalized feelings of worthlessness and low self-esteem. She described past and recent episodes of mania that included periods of extended lack of need for sleep, hyperactivity, substance abuse, loss of appetite, rapid speech, excessive energy and difficulty slowing down and focusing. She reported having recent thoughts of suicide but no recent attempts or intent. She did admit that she has made numerous suicide attempts in the past as well as recently. She indicated that she has attempted to injure herself by "cutting" and overdosing on

prescription medications. Claimant was hypervocal and had to be interrupted several times to get her to focus on the questions. She had difficulty sitting still throughout the interview. She was hyperactive and had a need to get up and move around on several occasions during the interview. She was diagnosed with bipolar disorder, current episode manic, and alcohol use disorder, moderate. The psychologist opined that Claimant demonstrated no significant deficits in orientation, concentration and attention, recent or remote memory, or ability to perform simple mental arithmetic. She demonstrated at least moderate deficits in general information, basic vocabulary, judgment and abstract thinking. Her mood symptoms did not appear to be well controlled at this time. She is likely to have difficulty performing work that involves following even simple, verbal or written instructions, with supervision. Her ability to work will be impacted by her ability to manage mood symptoms and to maintain sobriety, as well as any physical or medical limitations.

Claimant was admitted to the hospital on [REDACTED]. She was discharged on [REDACTED], with a discharge diagnosis of fracture of the cervical spine, status post discectomy and fusion of the cervical spine through thoracic #1, alcohol intoxication, delirium tremens, history of seizures, type 2 diabetes mellitus, nicotine addiction, chronic pain, depression and electrolyte imbalance.

On [REDACTED], Claimant was seen in the emergency department after being found on the floor. Her family found Claimant on the living room floor, and suspecting a seizure, called EMS, believing she may have broken her neck. At the emergency department, Claimant stated she had a seizure. Primary symptoms included seizures and intoxication. A CT of the cervical spine showed interval postsurgical changes status post C7-T1 anterior fusion without evidence of acute cervical spine fracture.

Claimant was admitted to the hospital on [REDACTED]. Claimant was discharged on [REDACTED] with a diagnosis of abdominal pain, alcoholic liver disease (ALD), and acute pyelonephritis. The CT of the abdomen, when compared with the [REDACTED] CT, revealed there has been interval development of bilateral renal enlargement, perinephric stranding and generalized heterogenous appearance of the renal parenchyma, most compatible with pyelonephritis. There were also multiple small, subcentimeter, ill-defined hypodense regions within the liver which may reflect areas of focal fatty infiltration.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). Based on the medical evidence, Claimant has presented evidence establishing that she does have some physical and mental limitations on her ability to perform basic work activities. The medical evidence has established that Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Ruling any ambiguities in Claimant's favor, this Administrative Law Judge (ALJ) finds that Claimant meets both. The analysis continues.

The third step of the analysis looks at whether an individual meets or equals one of the Listings of Impairments. 20 CFR 416.920(d). Claimant does not. The analysis continues.

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by Claimant in the past. 20 CFR 416.920(f). Claimant's past work history is that of a construction worker and as such, Claimant would be unable to perform the duties associated with her past work. Likewise, Claimant's past work skills will not transfer to other occupations. Accordingly, Step 5 of the sequential analysis is required.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once Claimant reaches Step 5 in the sequential review process, Claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that Claimant has the residual functional capacity for substantial gainful activity.

Based on an independent mental status evaluation in July, 2014, the psychologist opined Claimant demonstrated at least moderate deficits in general information, basic vocabulary, judgment and abstract thinking. Her mood symptoms did not appear to be well controlled at this time. She is likely to have difficulty performing work that involves following even simple, verbal or written instructions, with supervision. Her ability to work will be impacted by her ability to manage mood symptoms and to maintain sobriety, as well as any physical or medical limitations.

Claimant is 46 years old, with a high school equivalent education. Claimant's medical records are consistent with her testimony that she is unable to engage in even a full range of sedentary work on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986).

The Department has failed to provide vocational evidence which establishes that Claimant has the residual functional capacity for substantial gainful activity and that given Claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which Claimant could perform despite Claimant's limitations. Accordingly, this Administrative Law Judge concludes Claimant is disabled for purposes of the MA program.

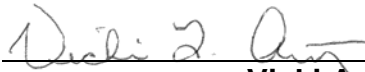
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department erred in determining Claimant is not currently disabled for MA/Retro-MA eligibility purposes.

Accordingly, the Department's decision is **REVERSED**, and it is ORDERED that:

1. The Department shall process Claimant's April 17, 2014, MA/Retro-MA application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.

2. The Department shall review Claimant's medical condition for improvement in January, 2016, unless her Social Security Administration disability status is approved by that time.
3. The Department shall obtain updated medical evidence from Claimant's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.



Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **1/20/2015**

Date Mailed: **1/20/2015**

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NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, 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 48909-8139

cc:

