

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

IN THE MATTER OF:

Reg. No: 2015-9
2013-63663 REMANDED
Issue No: 2009
Case No: [REDACTED]
Hearing Date: December 17, 2014
County: Kent (1)

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

**DECISION AND ORDER AFTER NEW HEARING ON REMAND
FROM KENT COUNTY CIRCUIT COURT**

This case is before an Administrative Law Judge of the Michigan Administrative Hearing System pursuant to an Order dated September 4, 2014, from the Honorable Donald Johnston, Circuit Court Judge, Kent County Circuit Court, and pursuant to the provisions of MCL 400.9, MCL 400.37, MCL 400.43(a), MAC R 400.941 and MCL 24.201, *et seq.*

PROCEDURAL HISTORY

1. On April 11, 2013, Claimant submitted an application for State Disability Assistance (SDA), Medical Assistance (MA) and Retro-Medical Assistance (Retro-MA).
2. On July 23, 2013, the department notified Claimant that her application for MA/Retro-MA had been denied and her SDA application had been approved.
3. Claimant requested hearing on August 5, 2013, protesting the denial of Medicaid.
4. A Notice of Hearing was mailed to Claimant on November 12, 2013, at her current address, informing her of the time and place of the December 3, 2013, hearing.
5. On December 3, 2013, the in-person hearing was held. Claimant and Claimant's Attorney, D. Scott Stuart from Legal Aid of Western Michigan, appeared. Claimant's husband, [REDACTED], also appeared and testified.
6. A Decision and Order were issued on January 14, 2014, finding the department had properly denied Claimant's application for Medicaid.
7. On February 3, 2014, the Michigan Administrative Hearing System received the Claim of Appeal from Respondent.

8. On September 4, 2014, the Honorable Donald Johnston of the Kent County Circuit Court vacated the ALJ's decision dated May 24, 2011; and this issue was remanded for a rehearing.
9. On December 17, 2014, an administrative hearing was held in person at the Department on Human Services in Kent County. Claimant and Claimant's Attorney [REDACTED] from Legal Aid of Western Michigan appeared. Claimant's husband [REDACTED] also appeared and testified. Assistant Attorney General [REDACTED] appeared by telephone on behalf of the Department.

ISSUES

Whether the DHS properly denied Claimant's Medical Assistance (MA) application?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

1. On April 11, 2013, Claimant applied for MA/Retro-MA.
2. On July 23, 2013, the department denied Claimant's application for the Medicaid program.
3. On January 14, 2014, a Decision and Order was issued finding the department had properly denied Claimant's application for Medicaid.
4. On September 4, 2014, the Honorable Donald Johnston of the Kent County Circuit Court vacated the ALJ's decision dated January 14, 2014, and this issue was remanded for a rehearing.
5. On December 2, 2014, a Notice of Hearing was mailed to Claimant and Claimant's Attorney notifying them of the scheduled in-person December 17, 2014, hearing at 1:00 p.m.
6. On December 17, 2014, the hearing was held at the Kent County DHS office. Claimant appeared along with her attorney Scott Stuart of Legal Aid of Western Michigan and a witness Troy Cunningham. The Department was represented by [REDACTED] and [REDACTED] Assistant Attorney General Brian McLaughlin appeared by telephone for the Department.
7. At the December 2014 hearing the exhibits from the previous hearing and the transcript from the previous hearing were admitted by stipulation of both parties.
8. Claimant has the following disabling impairments: chronic intestinal pseudo-obstruction, idiopathic gastroparesis, asthma, depression, alopecia.

9. Claimant experiences the following symptoms related to her impairments: pain, fatigue, shortness of breath, nausea, constipation, headaches, fevers, back spasms, insomnia, crying spells, irregular heartbeat, and muscle weakness.
10. Claimant takes the following prescribed medications:
 - a. Cyclobenzaprine
 - b. Advair
 - c. Morphine
 - d. Prozac
 - e. Clonidine
 - f. Trazodone
 - g. Lidocaine Gel
11. Claimant testified that she uses a wheel chair 60-70% of the time.
12. Claimant has a feeding tube in place, and it has been in place since May 2013.
13. Claimant is not able to do any bending or squatting.
14. Claimant needs help dressing.
15. Claimant testified that she experiences pain at a high level of 10 on an everyday basis.
16. Claimant testified that it takes her 20 to 30 minutes to inject food into her feeding tube.
17. In a Medical Examination Report dated September 10, 2012, Claimant's treating physician found that Claimant was capable of lifting less than 10 pounds occasionally, standing/walking 2 hours in an 8-hour day and sitting less than 6 hours in an 8-hour day.
18. Claimant is 35 years old.
19. Claimant completed high school, some college and training in medical transcription.
20. Claimant last worked in 2011 as a medical transcriptionist.
21. Claimant had an application with the Social Security Administration pending at the time of hearing.

CONCLUSIONS OF LAW

December 2013 Hearing

In this case, Claimant's appeal was denied because she received a final determination from the Social Security Administration that she was not disabled and she did not

appeal this determination within 60 days. This final determination was made in the spring of 2013 and the ALJ found that this determination was binding on the administrative appeal regarding Medicaid.

December 2014 Hearing

Claimant testified that during the time period in question, between the spring of 2013 and December 2013, her physical and mental health was deteriorating. Claimant testified to experiencing the following impairments: idiopathic gastroparesis, asthma, alopecia, immune problems, and depression. Claimant testified to having the following symptoms: pain, fatigue, shortness of breath, crying spells, insomnia, constipation, nausea, headaches, fevers, back spasms, hair loss, bone density loss and bleeding. Claimant testified that she uses a wheel chair 60-70% of the time. Claimant has a feeding tube. Claimant uses a spinal cord stimulator, ten's unit. Claimant takes the following prescribed medications: Clonidine, Trazodone, Morphine, Cyclobenzaprine, Prozac, Advair and Lidocaine Gel. Claimant testified that she was treating her depression from January 2013 to October 2013 by seeing a marriage counselor. Claimant testified that her feeding tube was moved several times during 2013. Claimant testified that her breathing problems have worsened since the spring of 2013.

The Medical Assistance (MA) program, (also known as Medicaid), is established by the 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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

Final SSI Disability Determination

SSA's determination that disability or blindness does **not** exist for SSI is **final** for MA if:

- The determination was made after 1/1/90, **and**
- No further appeals may be made at SSA; see EXHIBIT II in this item, **or**
- The client failed to file an appeal at any step within SSA's 60 day limit, **and**
- The client is **not** claiming:

A totally different disabling condition than the condition SSA based its determination on, **or**

An additional impairment(s) or change or deterioration in his condition that SSA has **not** made a determination on.

Eligibility for MA based on disability or blindness does **not** exist once SSA's determination is **final**. BEM 260

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the MA-P program. 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.

Federal regulations require that the Department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is, or is not, disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, the Claimant is not working. Therefore, the Claimant is not disqualified at this step in the evaluation.

The second step to be determined in considering whether the Claimant is considered disabled is the severity of the impairment. In order to qualify the impairment must be considered severe, which is defined as an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Examples of these include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, 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. 20 CFR 416.921(b).

In this case, the Claimant's medical evidence of record supports a finding that Claimant has significant physical and mental limitations upon Claimant's ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling. Medical evidence has clearly established that the Claimant has an impairment (or combination of impairments) that has more than a minimal effect on the Claimant's work activities. See Social Security Rulings: 85-28, 88-13, and 82-63.

In the third step of the analysis, 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. This Administrative Law Judge finds that the Claimant's medical record does not support a finding that the Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR Part 404, Part A. Listings 5.02, 5.08 and 12.04 were considered.

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 clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities, or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged. 20 CFR 416.913. A conclusory statement by a physician, or mental health professional, that an individual is disabled, or blind, is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.927.

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, the Claimant's past employment was as a medical transcriptionist. Working as a medical transcriptionist, as described by Claimant at hearing, would be considered sedentary work. The Claimant's impairments would prevent her from doing past relevant work. Specifically, Claimant's fatigue and muscle weakness would preclude her from performing this job in addition the requirements of administering her feeding tube would preclude her from performing this job with only the standard 15 minute breaks every 4 hours. This Administrative Law Judge will continue through step 5.

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 Fd2 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 substantial gainful activity. After careful review of Claimant's extensive medical record, and the Administrative Law Judge's personal interaction with Claimant at the hearing, this Administrative Law Judge finds that Claimant's exertional and non-exertional impairments render Claimant unable to engage in a full range of, even sedentary, work activities 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 the Claimant could perform despite Claimant's limitations.

Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA-P program as of January 2013. Claimant's testimony regarding her limitations and ability to sit, stand, walk, lift, and carry is credible and supported by substantial medical evidence and the assessment of her treating physician. Claimant also has psychological impairments that are substantially limiting. The requirements of Claimant's feeding tube and the time required for administering food to the feeding tube would be preclusive of full-time competitive employment. Claimant's testimony that her conditions have worsened since the spring of 2013 was credible and supported by medical records.

Therefore, Claimant is found to be disabled.

The denial of Claimant's Social Security application in the spring of 2013 does not preclude Claimant from pursuing this appeal because her medical conditions worsened substantially between the spring of 2013 and both the December 2013 and December 2014 hearings. BEM 260 Also, it should be noted that Claimant has subsequently reapplied for Social Security benefits and has an active appeal.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of January 2013.

Accordingly, the Department's decision is hereby **REVERSED** and the Department is ORDERED to:

1. Initiate a review of the application for MA and retro MA dated April 11, 2013, if not done previously, to determine Claimant's non-medical eligibility.

2. The Department shall inform Claimant of the determination in writing. A review of this case shall be set for February 2016.



Aaron McClintic
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **02/27/2015**

Date Mailed: **02/27/2015**

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:

