

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-017044
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 27, 2015
County: St. Clair

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 4-way telephone hearing was held on January 27, 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 Family Independence Manager [REDACTED].

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. Claimant submitted new evidence for consideration. This matter is now before the undersigned for a final decision.

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 September 3, 2014, the Medical Review Team (MRT) denied Claimant's application for MA/Retro-MA.
3. On September 4, 2014, the Department notified Claimant that her application for MA/Retro-MA had been denied.
4. On November 20, 2014, Claimant filed a request for a hearing to contest the Department's negative action.

5. Claimant had applied for Social Security disability benefits at the time of the hearing.
6. Claimant is a 52 year old woman whose birthday is [REDACTED].
7. Claimant is 5'5" tall and weighs 157 lbs.
8. Claimant does not have an alcohol, drug or nicotine problem.
9. Claimant has a driver's license and is able to drive.
10. Claimant has an eleventh grade education.
11. Claimant has not worked in over 15 years.
12. Claimant alleges disability on the basis of uncontrolled high blood pressure, uncontrolled diabetes, duodenitis, pancreatitis, coronary artery disease, reduced ejection fraction of 35%, gastroesophageal reflux disease, history of cervical cancer and decreased vision in the right eye, possibly diabetes related.
13. Claimant's impairments have lasted, or are expected to last, continuously for a period of twelve months or longer.
14. 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

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.

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.

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).

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. The medical information indicates that Claimant suffers from uncontrolled high blood pressure, uncontrolled diabetes, duodenitis, pancreatitis, heart failure with reduced ejection fraction of 35%, gastroesophageal reflux disease, history of cervical cancer and decreased vision in the right eye, possibly diabetes related. Ruling any ambiguities in Claimant's favor, this Administrative Law Judge (ALJ) finds that Claimant meets duration and severity. The analysis continues.

On [REDACTED], Claimant was admitted to the hospital, complaining of chest pain. She underwent a stress test which was negative for inducible ischemia. She was started back on her medications for diabetes, hypertension, and dyslipidemia. She was discharged in stable condition on [REDACTED] with a diagnosis of chest pain-atypical, medical noncompliance, diabetes mellitus type II-uncontrolled, hypertension-uncontrolled, history of cervical cancer and an electrolyte imbalance.

Claimant was admitted to the hospital on [REDACTED], with abdominal pain. A CT from the lung bases to the hips revealed duodenitis and pancreatitis. She was discharged on [REDACTED], with a diagnosis of abdominal pain secondary to duodenitis and/or pancreatitis, diabetes and hypertension.

On [REDACTED], Claimant was admitted to the hospital with a diagnosis of antral gastritis, uncontrolled hypertension and uncontrolled diabetes mellitus. She had abdominal pain with nausea and vomiting, likely secondary to gastritis with diabetes gastroparesis. Upon further workup, Claimant was found to have poorly controlled diabetes. Claimant had an episode of chest pain while hospitalized. The nuclear medicine myocardial perfusion scan showed findings suggestive of mild periinfarct reversible myocardial ischemia in the anterior wall with diffuse hypokinesis and diminished left ventricular ejection fraction of 36% with a fixed perfusion defect in the anteroapical region likely representing a prior myocardial infarction. She underwent cardiac catheterization on 1 [REDACTED]. Hypertension was also noted to be poorly control and was difficult to control during her entire admission. Her average systolic blood pressure was in the 170's. She also has poorly controlled diabetes mellitus with complications including her poor vision and suspected diabetic gastroparesis. She was started on insulin therapy. Given her poor vision, insulin pens were prescribed to eliminate some error related to her poor eyesight. She was diagnosed with heart failure with reduced ejection fraction on admission. Claimant was discharged on 11/22/2014, with a diagnosis of diabetic gastroparesis, tobacco abuse, and heart failure with reduced ejection fraction. She was instructed to obtain a CT with pancreatic mass protocol and follow up with the gastroenterologist. She was also informed to follow up with cardiology. The discharging physician indicated she would also benefit from following up with an ophthalmologist and a podiatrist for routine diabetic management.

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). In this case, Claimant has a history of less than gainful employment. As such, there is no past work for Claimant to perform, nor are there past work skills to transfer to other work occupations. Accordingly, Step 5 of the sequential analysis is required.

The fifth and final step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon Claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite you 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 his/her limitations. 20 CFR 416.966.

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.

Claimant credibly testified that she has a limited tolerance for physical activities and is unable to stand or sit for lengthy periods of time. Claimant reported her diabetes and blood pressure are uncontrolled. She stated she experiences lightheadedness, dizziness, shortness of breath and headaches daily. She testified she can walk half a block, stand for 15 – 20 minutes before her back starts hurting and sit for 45 minutes.

After careful review of Claimant's medical records 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). Based on Claimant's vocational profile (approaching advance age, Claimant is 52, with an eleventh grade education and an unskilled work history), this Administrative Law Judge finds Claimant's MA/Retro-MA benefits are approved using Vocational Rule 201.09 as a guide. Consequently, the Department's denial of her April 17, 2014, MA/Retro-MA application cannot be upheld.

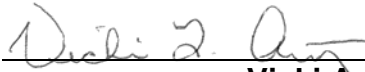
DECISION AND ORDER

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 March, 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.

It is SO ORDERED.



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

Date Signed: **3/10/2015**

Date Mailed: **3/10/2015**

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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:

