

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 March 19, 2014, Claimant submitted an application for public assistance seeking MA-P benefits, with request for retroactive coverage to February 2014.
2. On June 19, 2014, the Medical Review Team (MRT) found Claimant not disabled.
3. On August 4, 2014, the Department sent Claimant and the AHR a Benefit Notice denying the application based on MRT's finding of no disability.
4. On October 24, 2014, the Department received the AHR's timely written request for hearing.
5. Claimant alleged physical disabling impairment due to back, neck and hand pain.
6. Claimant alleged mental disabling impairments due to depression.
7. At the time of hearing, Claimant was 62 years old with [REDACTED] she was 4'11" in height and weighed 148 pounds.
8. Claimant is a college graduate from [REDACTED] She can read, write, and speak English
9. Claimant has an employment history of work as a seamstress, both as the owner of her own business and in a bridal shop.
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 Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and 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.

MA-P benefits are available to disabled individuals. BEM 105 (January 2014), p. 1; BEM 260 (July 2014), pp. 1-4. Disability for MA-P purposes is defined as the inability to do any substantial gainful activity (SGA) 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). To meet this standard, a client must satisfy the requirements for eligibility for Supplemental Security Income (SSI) receipt under Title XVI of the Social Security Act. 20 CFR 416.901.

To determine whether an individual is disabled for SSI purposes, the trier-of-fact must apply a five-step sequential evaluation process and consider the following:

- (1) whether the individual is engaged in SGA;
- (2) whether the individual's impairment is severe;
- (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404;
- (4) whether the individual has the residual functional capacity to perform past relevant work; and
- (5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work.

20 CFR 416.920(a)(1) and (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 to 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).

In general, the individual has the responsibility to establish a disability 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, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 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, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

As outlined above, the first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered

not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Claimant has not engaged in SGA activity during the period for which assistance might be available. Therefore, Claimant is not ineligible under Step 1 and the analysis continues to Step 2.

Step Two

Under Step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for MA-P means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 12 months. 20 CFR 416.922.

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). 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); see also *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985). Basic work activities means the abilities and aptitudes necessary to do most jobs, including (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. A disability claim obviously lacking in medical merit may be dismissed. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may 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). However, under the *de minimus* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs* at 862. A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28. If such a finding is not clearly established by medical evidence, however, adjudication must continue through the sequential evaluation process. *Id.* If an

adjudicator is unable to determine clearly the effect of an impairment or combination of impairments on the individual's ability to do basic work activities, the sequential evaluation process should not end with the not severe evaluation step; rather, it should be continued. *Id.*; SSR 96-3p.

In the present case, Claimant alleges physical disabling impairment due to back, neck and hand pain and mental disabling impairment due to depression. The medical evidence presented at the hearing was reviewed and is summarized below.

██████████ Claimant went to the emergency department complaining of shortness of breath and "chest heaviness." The presiding physician noted that Claimant denied any arm, neck or jaw pain or numbness or tingling. The doctor did not identify any abnormal results from the physical exam. The doctor also noted that Claimant's mood, affect and behavior were normal. A myocardial perfusion imaging performed ██████████ ██████████ showed a small area in the mid to apical anterior wall demonstrating mildly decreased perfusion; while it was believed that this was not problematic, it was difficult to completely exclude a small area of myocardium at risk of stress-induced ischemia. The test also showed normal wall motion and wall thickening with a left ventricular ejection fraction of greater than 70% and enterogastric reflux. (Exhibit B, pp. 38-39.) ██████████ chest x-ray showed no acute cardiopulmonary disease. (Exhibit B, pp. 39-40.) A stress test showed abnormal ST segment response compatible with ischemia. (Exhibit B, pp. 41-43.) ██████████ ██████████ echocardiogram could not rule out an anterior infarct, age undetermined. (Exhibit, pp. 44-49.) The doctor indicated that Claimant's condition could be secondary to anxiety. Claimant was discharged the next day with her conditions resolved. (Exhibit B, pp. 27-37.)

██████████ Claimant completed a consultative physical exam and a report was prepared. The consulting doctor concluded that Claimant suffered from hypertension but her blood pressure was well-controlled and she had no symptoms of angina or signs of congestive heart failure; no neck vein distention, heart murmur, gallop, pulmonary rales, visceromegaly or leg edema; and no orthopnea or paroxysmal nocturnal dyspnea. The doctor did not identify any limitations to Claimant's range of motion and no limitations on any of her abilities. (Exhibit B, pp. 10-15.)

While there was not considerable medical evidence presented in support of Claimant's disability allegations, in consideration of the *de minimus* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Claimant suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 12 months. Therefore, Claimant has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination as to whether the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

The evidence shows diagnosis of, and treatment for, hypertension and anxiety. Claimant has also alleged neck, arm, and back pain. Listings 1.00 (musculoskeletal), particularly 1.02 (major dysfunction of a joint) and 1.04 (disorders of the spine); 4.00 (cardiovascular system); and 12.00 (mental disorders), particularly 12.04 (anxiety-related disorders), were considered.

The medical evidence presented does **not** show that Claimant's impairments meet or equal the required level of severity of any of the above-referenced listings to be considered as disabling without further consideration. Because Claimant's impairments are insufficient to meet, or to equal, the severity of a listing, Claimant is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Step 4, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. Impairments, and any related symptoms, may cause physical and mental limitations that affect what a person can do in a work setting. 20 CFR 416.945(a)(1). RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s) and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4). The total limiting effects of all impairments, including those that are not severe, are considered. 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants 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).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If the limitations and restrictions imposed by the individual's impairment(s)

and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). To determine the exertional requirements, or physical demands, of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a).

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.

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. 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. If someone can do light work, ... he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

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, ... he or she can also do sedentary and light work.

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, ... he or she can also do medium, light, and sedentary work.

Very heavy work.

Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, ... he or she can also do heavy, medium, light, and sedentary work.

20 CFR 416.967.

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of nonexertional limitations or restrictions include difficulty functioning 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).

In this case, Claimant alleged that she experienced back, neck and hand pain that made it difficult for her to walk more than three to four houses away from her senior housing; to carry a gallon of milk; to stand more than 15 minutes; to bend or squat; or to climb stairs. She lives with her husband who helps her with the household chores and does most of the lifting and shopping. Claimant testified that, because of her pain when she stands, she takes frequent breaks when she cooks and cleans. She further testified that she suffered from continuous headaches, needed surgery to correct her hearing loss (although it is noted that she did not have any difficulties with her hearing at the hearing), suffered from gastrointestinal issues, and had knee pain. She wore hand/wrist braces at the hearing and testified that she wore them all the time.

The medical documentation supporting Claimant's testimony is considerably limited. There was no medical evidence supporting Claimant's purported neck, back and hand pain. To the contrary, in his notes following Claimant's [REDACTED] admission for shortness of breath and "chest heaviness," the presiding physician noted that Claimant denied any arm, neck or jaw pain or numbness or tingling at that time. The doctor indicated that Claimant's condition could be secondary to anxiety, but noted that her mood, affect and behavior were normal. Testing during the hospitalization showed a possible stress-induced ischemia and possible anterior infarct, age undetermined. But Claimant's left ventricular ejection fraction was greater than 70%. Claimant was discharged the next day with her conditions resolved. (Exhibit B, pp. 27-49.) In the [REDACTED] [REDACTED] consultative physical exam report, no abnormalities were noted in the physical examination. Furthermore, the doctor did not identify any limitations to Claimant's range of motion and no limitations on any of her abilities. (Exhibit B, pp. 10-15.) Therefore,

Ultimately, after review of the entire record to include Claimant's testimony but in light of the lack of medical evidence supporting any of Claimant's alleged limitations, it is found that Claimant maintains the physical capacity to perform medium work as defined by 20 CFR 416.967(c) and has no to mild limitations on her mental capacity to perform basic work activities.

Claimant's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Claimant's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

As determined in the RFC analysis above, Claimant has the physical RFC to perform medium work activities and has no to mild limitations in her mental capacity to perform basic work activities. Claimant's work history in the 15 years prior to the application consists of work as a seamstress, both as the owner of her own business and in a bridal shop (light to medium, skilled). In light of the entire record and Claimant's mental and physical RFC, it is found that Claimant is able to perform past relevant work. It is noted that Claimant indicated in her Activities of Daily Living form, DHS-49G, that she continues to spend several hours sewing; while she indicates that her neck and eye issues impose limitations, there is no medical evidence on the record to support any such limitations. Because Claimant retains the RFC to meet the physical and mental demands of past work, she cannot be considered as disabled. Accordingly, Claimant is found **not** disabled at Step 4, and no further analysis is required.

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds Claimant **not** disabled for purposes of the MA-P benefit programs.

DECISION AND ORDER

Accordingly, it is ORDERED that the Department's determination is AFFIRMED.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Health and Human Services

Date Signed: **4/24/2015**

Date Mailed: **4/24/2015**

ACE / tlf

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:

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