

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-011521-RECON
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: September 22, 2015
County: Wayne-District 19

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

DENOVO HEARING DECISION

Procedural History

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 telephone hearing was initially held on November 18, 2014 from Lansing, Michigan. [REDACTED] ([REDACTED]) represented Claimant, as her Authorized Hearing Representative (AHR) during the hearing. Claimant personally appeared and provided testimony and [REDACTED] also appeared as a witness for Claimant in this matter. [REDACTED] appeared on behalf of the Department of Health and Human Services (Department).

On November 19, 2014, the assigned Administrative Law Judge issued a Decision and Order affirming the Department's determination that Claimant was not disabled for purposes of the Medical Assistance (MA) benefit program. On December 8, 2014, Claimant's Authorized Hearing Representative (AHR) requested a rehearing/reconsideration. On August 5, 2015, the Administrative Law Manager issued a Decision and Order of Reconsideration which vacated the November 19, 2014 Decision and Order and scheduled a *de novo* hearing.

In order to conduct the *de novo* hearing, the Michigan Administrative Hearing System on August 21, 2015 mailed a Notice of Hearing to all interested parties scheduling a telephone hearing, which took place on September 22, 2015 from Lansing, Michigan. Nancy Anderson (AHR from [REDACTED]) again represented Claimant. Edward Birrell (Claimant's father) appeared as a witness for Claimant. Claimant was deceased. Helen Bell (Eligibility Specialist/Medical Contact Worker) represented the Department. The following is the hearing decision following the *de novo* hearing.

Did the Department properly determine that Claimant was not disabled for purposes of the Medical Assistance (MA) benefit program?

ISSUE

Did the Department properly determine that Claimant was not disabled for purposes of the Medical Assistance (MA) benefit program?

FINDINGS OF FACT

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

1. On February 20, 2014 Claimant filed an application for MA and Retroactive MA (January through March, 2014) alleging disability.
2. On June 17, 2014, the Medical Review Team (MRT) denied Claimant's application.
3. On June 24, 2014, the Department caseworker sent Claimant notice that his application was denied.
4. On September 9, 2014, Claimant filed a request for a hearing to contest the Department's action.
5. A telephone hearing was held on November 18, 2014.
6. On November 19, 2014, the assigned Administrative Law Judge issued a Decision and Order which affirmed the Department's decision that Claimant was not disabled for purposes of the MA benefit program.
7. On December 8, 2014, Claimant's Authorized Hearing Representative (AHR) requested a rehearing/reconsideration.
8. Claimant died on March 10, 2015.
9. On August 5, 2015, the Administrative Law Manager issued a Decision and Order of Reconsideration which vacated the November 19, 2014 Decision and Order and scheduled a *de novo* hearing.
10. On August 25, 2015, the Wayne County Probate Court issued Letters of Authority for Special Personal Representative which named [REDACTED] as Special Personal Representative of Claimant's estate. The letters expire on August 25, 2016.
11. A notice of hearing was mailed to parties on August 21, 2015 which scheduled a telephone hearing for September 22, 2015.
12. The *de novo* hearing took place on September 22, 2015.

13. Because Claimant was deceased, Claimant's AHR and Claimant's brother provided factual testimony during the *de novo* hearing.
14. During the hearing, Claimant's AHR indicated that Claimant had the following disabling impairments: high blood pressure, liver failure, jaundice, bulimia, bipolar disorder and hypokalemia.
15. According to Claimant's father, Claimant had a high school education and some college. He stated that Claimant last worked as a waitress in 2000.
16. Claimant was born on [REDACTED] and was 48 years old at the time of death.
17. Claimant's cause of death was chronic ethanol abuse.

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 Program Reference Manual (PRM).

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 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

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. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only the claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in

question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

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 your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e). Statements about pain or other symptoms do not alone establish disability. Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...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 blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

The law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful activity can be achieved, a finding of not disabled must be rendered.

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).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945. 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.

At step one, the Administrative Law Judge must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he or she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he or she is not disabled regardless of how severe his or her physical or mental impairments are and regardless of his or her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the 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 and 416.921; 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 or she is not disabled.

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, App. 1, 12.00(C). First, an individual's pertinent symptoms, signs and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1). When a medically determinable mental

impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2). Functional limitations are assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively and on a sustained basis. 20 CFR 416.920(a)(2). Chronic mental disorders, structured settings, medication and other treatment, and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(4).

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, 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).

At step three, the Administrative Law Judge must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d),

404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(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, all of the claimant's impairments, including impairments that are not severe, must be considered (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his or her past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 (fifteen) years or 15 (fifteen) years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the claimant has the residual functional capacity to do his or her past relevant work, 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 and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the claimant is able to do any other work considering his or her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he or she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he or she is disabled.

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. The terms are defined as follows:

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).

The analysis begins at Step 1. To be eligible for disability benefits, a person must be unable to engage in substantial gainful activity (SGA). **On this record**, Claimant was not engaged in substantial gainful activity and has not worked since 2000. Therefore, Claimant is not disqualified from receiving disability at Step 1 and the analysis proceeds to Step 2.

In the record presented, Claimant did not appear. Claimant's father and AHR both offered testimony during the hearing to establish her relevant work history. The Administrative Law Judge was unable to definitively establish Claimant's employment status, ability to work, and/or attempts to work during the time period in question. Under ordinary circumstances, Claimant could not be found disabled at Step 1 without providing sworn testimony to the fact-finder that she was disabled for purposes of the MA program. However, the instant matter is a de novo hearing and because Claimant passed away, it was impossible to obtain her testimony. However, the undersigned will proceed to Step 2 of the sequential analysis.

At Step 2, Claimant's symptoms are evaluated to see if there is an underlying medically determinable physical or mental impairment that could reasonably be expected to produce Claimant's pain or other symptoms. This must be shown by medically acceptable clinical and laboratory diagnostic techniques. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of Claimant's symptoms to determine the extent to which they limit Claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

The medical records contained in this case are summarized below.

On [REDACTED], Claimant was admitted to the hospital after visiting the emergency room because her jaundice had worsened. Claimant had a chest x-ray on [REDACTED] because she complained of difficulty breathing. This x-ray was normal

and her lungs were clear. However, a frontal and lateral chest x-ray which showed that she had bibasilar pneumonia, worse on the right.

Claimant's medical records contained office visits to the [REDACTED] dating back to 2011.

The records indicated that Claimant had been drinking and that she had increased abdominal girth as well. Claimant complained of feeling weak. The records indicated that she was admitted to the hospital on [REDACTED] for liver failure as well as jaundice. The records also contain several medical consultations.

Claimant had a psychiatric evaluation on [REDACTED] to determine whether she had the capacity for medical decision-making. Apparently, claimant had refused to go to rehabilitation and her family was concerned. The psychiatrist interviewed claimant and found that she clearly understood why she was in the hospital. She was able to state that she was there for jaundice and she understood that her alcohol has contributed to her cirrhosis of the liver. The records also indicated, "She was clearly able to articulate the drawbacks of what had occurred with regards to our alcohol intake." Claimant mentioned to the psychiatrist that her last drink was the day she was admitted. She told the psychiatrist that she had been to rehabilitation previously and did not want to go back. In fact, claimant had been through multiple rehabs and did not find any benefit from it. During her interview with the psychiatrist, claimant denied any suicidal or homicidal ideations. She even denied feeling depressed. (Exhibit 1, p 37) according to these records, claimant had a history of drinking about a pint a day and had done so for many years. The psychiatrist consult note also indicated that claimant had spent an inordinate amount of time drinking and has had impairments in her relationships. According to the psychiatrist, she clearly fulfills the criteria for dependence issues. The psychiatrist found that Claimant didn't have a capacity for medical decision-making. He believed that she made poor judgment about continuing to drink and was not getting the help she needed. She was simply addicted to alcohol according to the psychiatrist. She was given Topamax 25 mg.

Claimant also had a nephrology consultation on [REDACTED]. The nephrologist diagnosed alcoholic liver cirrhosis and jaundice. He also found that she had acute severe alcoholic hepatitis. Her discriminate function was more than 32, which is about 34, which qualified her for severe alcoholic hepatitis. Claimant's hemoglobin was 7.5. The nephrologist also diagnosed hepatic encephalopathy. He gave her Lactulose 30 ml. She was also diagnosed with severe hypokalemia, hypomagnesemia and alcoholic abstinence.

Claimant's lab work showed she had a total bilirubin of 23.7, direct 7.7. Her urinalysis showed leukocyte esterase 1+, nitrite negative, white blood cell count 6 to 10, bacterial was +1. Claimant's urine culture showed 40,000 colonies of Gram-negative bacilli. Her chest x-ray showed pneumonia that was worse on the right side. A second white blood count showed 11.2, hemoglobin 7.5 and hematocrit was 31.7.

On [REDACTED], claimant had a consultation from an infectious disease physician. The infectious disease position recommended that she continue taking Ceftriaxone.

On [REDACTED], claimant had a pulmonary medicine consultation. This revealed that she had some mild atelectasis, right lower lobe and was related to a distended abdomen.

The records show that on [REDACTED] claimant slipped while on the commode and hit her head. There was no evidence of seizure, laceration or bleeding on the head. She was placed back into her bed. Claimant had a follow-up x-ray on [REDACTED] which was normal.

Claimant's Social Summary (DHS-49B), dated [REDACTED], indicated that she lived alone and had not been receiving SSI/RSDI. The only hospitalization indicated was for hypokalemia in January, 2014. The form indicated that claimant had trouble with memory, signs of fatigue, signs of pain/distress, understanding, walking and was withdrawn.

Claimant's Medical-Social Questionnaire (DHS-49-F) indicated that she worked as a waitress from January, 2004 to December, 2005. This form also indicated that she worked 40 hours per week.

Claimant's Activities of Daily Living (DHS-49-G) indicated the claimant usually fix her own meals. She usually fixed easy foods such as sandwiches or anything microwavable. This form also indicated that claimant went shopping weekly but did not spend very much time doing so. Under the DHS-49-G section E – Additional Information, claimant indicated that she drank alcohol daily, a fifth a day. (Exhibit 1, p 99)

The objective medical evidence in the record shows that Claimant had a medically determinable impairment that was "severe" for purposes of Step 2. The records show that Claimant's impairment significantly limited her ability to perform basic work activities. However, there is no objective clinical medical evidence in the record that Claimant suffered from a severely restrictive mental impairment.

The objective clinical evidence showed that Claimant has a physical 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.

Claimant has presented medical evidence that demonstrates she had physical limitations on her ability to perform basic work activities. The medical evidence has established that Claimant had an impairment, or combination of impairments, that has more than a *de minimus* effect on her basic work activities. Further, the impairments have lasted continuously for 12 (twelve) months; therefore, Claimant is not disqualified from receiving MA-P benefits at Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Claimant's AHR argued that she could meet a listing. The evidence confirms treatment/diagnoses of alcoholic hepatitis, hepatic encephalopathy, severe hypokalemia, hypomagnesemia and alcoholic abstinence.

The following listings were considered in light of the objective evidence: 5.05, 7.00, 7.18, and 12.09. Based on the above objective medical evidence, Claimant does not meet, but may have medically equaled the criteria of listing 5.05 from 12.09. The analysis should proceed to the next step.

Before Step 4, the Administrative Law Judge must determine Claimant's residual functional capacity to perform the requirements of her past relevant work. Here, Claimant has a work history as a waitress and that she may have last worked in 2000. Working as a waitress would be considered light work. The objective records showed that Claimant, during the relevant time period, was able to do the following activities: walk short distances without assistance; grip/grasp without issue; sit; lift/carry items without restriction; stand; and could freely bend and squat. The objective findings did not show any physician imposed limitations.

The question here is whether Claimant had the ability to do physical and mental work activities on a sustained basis despite limitations from her impairments. The records showed that Claimant's impairments would have prevented her from doing past relevant work.

After review of the entire record, including Claimant's testimony, this Administrative Law Judge finds that Claimant was not able to maintain the physical demands necessary to perform light work as defined by 20 CFR 416.967(a). This was due to Claimant's continued alcoholism that had been treated but Claimant was noncompliant with treatment. This Administrative Law Judge finds sufficient evidence in this record that demonstrates Claimant was unable to perform her past relevant work. Because the record evidence shows that Claimant is unable to do any past relevant work, the analysis proceeds to the fifth and final step.

At Step 5, this Administrative Law Judge must determine whether or not Claimant has the residual functional capacity to do any other work in the national economy considering his or her residual functional capacity, age, education, and work experience. At this point, the burden of proof shifts to the Department. The entire record shows that Claimant was not capable of light employment on a consistent basis due to her several alcohol dependence.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the

regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

The testimony of Claimant's AHR and Claimant's father as well as the objective evidence in this case indicates that Claimant has a history of alcohol abuse. Applicable law is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that Claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because her alcohol abuse is material to her alleged impairment and alleged disability.

In this record, the hospital and office records indicate the Claimant had long-standing chronic and continuous alcohol abuse. The hospital records also show that her jaundice, hepatic encephalopathy, hypokalemia and hypomagnesemia were related to the alcohol abuse. Claimant's AHR contends that even if Claimant had stopped drinking, it would not have helped her condition. However, the undersigned finds that the objective medical records in this matter do not support this position. It should be noted that the January 20, 2014 psychiatric records revealed that Claimant told the psychiatrist that she did not want to return to rehabilitation and that she had been through multiple rehabs and did not find any benefit from it.

During the hearing, the Administrative Law Judge discussed with the parties the possibility of whether Claimant's previous hearing testimony could be used in this matter. However, the Administrative Law Judge did not issue an order that the previous recording could be used in this matter. In addition, Claimant's AHR, on the record, requested an opportunity to follow up on the recording if the Administrative Law Judge permitted use of Claimant's prior testimony.

To the extent that the instant matter is a *De Novo* hearing, the Administrative Law Judge, as the finder of fact, would be unable to use previous recorded testimony in order to determine whether or not Claimant is disabled in this matter. A *DeNovo* hearing requires the Administrative Law Judge to conduct the hearing as if the previous hearing had not occurred. In addition, Claimant's AHR appeared during Claimant's previous hearing and was aware that a digital recording was made of those proceedings. Claimant's AHR was also aware that Claimant had passed away and that she would be unavailable to testify during the *DeNovo* hearing. At no time did Claimant's AHR request a written transcript of the earlier hearing nor was there any attempt to include the written

transcript as an exhibit in this matter. Under the circumstances, even if the transcript could have been included as an exhibit in this matter, it would not have made any difference as the objective medical record simply did not support a finding of disability for purposes of the MA program.

Accordingly, this Administrative Law Judge finds that the Department has established by the necessary competent, material and substantial evidence on the record that it acted in compliance with Department policy when it determined that Claimant was not eligible to receive MA because she did not meet the statutory definition of disability. Overall, the records are not sufficient to show that Claimant's impairments and limitations would still have met the disability criteria without the contributing issues from the alcohol abuse.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has appropriately established on the record that it acted in compliance with Department policy when it denied Claimant's application for MA because Claimant was not disabled.

Accordingly, the Department's decision is **AFFIRMED**.

IT IS SO ORDERED.



C. Adam Purnell
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **9/30/2015**

Date Mailed: **9/30/2015**

CAP/las

NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or

reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted 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 Department, AHR or the claimant 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 the hearing decision is mailed.

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

cc:

