

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

**IN THE MATTER OF:**



MAHS Reg. No.: 15-017619  
Issue No.: 2009  
Agency Case No.:   
Hearing Date: November 19, 2015  
County: Wayne (19)

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

**HEARING DECISION**

Following Petitioner's request for a hearing, this matter is before the undersigned administrative law judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on November 19, 2015, from Detroit, Michigan. Petitioner appeared and was represented by . The Michigan Department of Health and Human Services (MDHHS) was represented by medical contact worker.

**ISSUE**

The issue is whether MDHHS properly denied Petitioner's Medical Assistance (MA) eligibility for the reason that Petitioner is not a disabled individual.

**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 13, 2014, Petitioner applied for MA benefits, including retroactive MA benefits from December 2013.
2. Petitioner's only basis for MA benefits was as a disabled individual.
3. On August 19, 2015, the Medical Review Team (MRT) determined that Petitioner was not a disabled individual (see Exhibits 10-11).
4. On September 4, 2015, MDHHS denied Petitioner's application for MA benefits and mailed a Health Care Coverage Determination Notice (Exhibits 58-60) informing Petitioner of the denial.

5. On September 21, 2015, Petitioner's AHR requested a hearing disputing the denial of MA benefits.
6. As of the date of the administrative hearing, Petitioner was a 54 year-old-female.
7. Petitioner has not earned substantial gainful activity since before the first month of benefits sought.
8. Petitioner's highest education year completed was the 12<sup>th</sup> grade.
9. Petitioner has a history of unskilled employment, with no known transferrable job skills.
10. Petitioner alleged disability based on restrictions related to diagnoses of asthma, COPD, and various joint pains and damage.

### **CONCLUSIONS OF LAW**

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105. Department policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Prior to a substantive analysis of Petitioner's hearing request, it should be noted that Petitioner's AHR noted special arrangements in order to participate in the hearing; specifically, a 3-way telephone hearing was requested. Petitioner's AHR's request was granted and the hearing was conducted accordingly.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 (10/2010), p. 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* It was not disputed that Petitioner's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies:

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;

- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).  
BEM 260 (7/2012) pp. 1-2

There was no evidence that any of the above circumstances apply to Petitioner. Accordingly, Petitioner may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Petitioner is a disabled individual. *Id.*, p. 2.

Generally, state agencies such as MDHHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally 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 functionally identical definition of disability is found under MDHHS regulations. BEM 260 (7/2012), p. 8.

SGA means a person does the following: performs significant duties, does them for a reasonable length of time, and does a job normally done for pay or profit. *Id.*, p. 9. Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute SGA. *Id.*

The person claiming a physical or mental disability has the burden 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 ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. 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).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The 2015 monthly income limit considered SGA for non-blind individuals is \$1,090.

Petitioner credibly denied performing any employment since the date of the MA application; no evidence was submitted to contradict Petitioner's testimony. Based on the presented evidence, it is found that Petitioner is not performing SGA and has not performed SGA since the date of MA application. Accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

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

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

Hospital documents (Exhibits A1-A10) dated May 5, 2008, were presented. It was noted that Petitioner presented with complaints of left lumbar pain with muscle spasms. It was noted Petitioner could not ambulate due to pain. An impression of radiculopathy secondary to degenerative disk disease was noted. Noted discharge diagnoses included acute herniated disc, intractable back pain, and acute exacerbation of asthma.

Physician office visit notes (Exhibit 38) dated March 19, 2013, were presented. Ongoing treatment for bronchial asthma was noted.

Physician office visit notes (Exhibit 39) dated July 25, 2013, were presented. It was noted Petitioner reported chest pain and anxiety. Assessments of chronic asthma and depression were noted. Various medications were noted to be prescribed.

Hospital emergency room documents (Exhibits 33-37) dated December 31, 2013, were presented. It was noted that Petitioner presented with respiratory distress. A chest x-ray was noted to be negative. It was noted Petitioner reportedly quit a 1 pack per day smoking habit 6 months earlier. Petitioner received IV antibiotics, IV Solo-Medrol, and nebulizer treatments. It was noted that Petitioner's breathing improved and she was discharged. Xopenex nebulizer was noted to be prescribed at discharge. A recommended follow-up in a week was noted. A discharge diagnosis of asthma exacerbation was noted.

Physician office visit notes (Exhibit 40) dated March 27, 2014, were presented. Assessments of chronic asthma and morbid obesity were noted. Various medications were continued.

A Medical Examination Report (Exhibits 26-28) dated August 5, 2014, was presented. The form was completed by an internal medicine physician with an approximate 8½ year history of treating Petitioner. Petitioner's physician listed diagnoses of asthma, HTN, and shortness of breath. A physical examination noted cervical spine tenderness. An impression was given that Petitioner's condition was stable. It was noted that Petitioner can meet household needs.

An internal medicine examination report (Exhibits 43-49) dated July 30, 2015, was presented. The report was noted as completed by a consultative physician. Petitioner reported a complaint of recurring dyspnea due to asthma and body pain (primarily throughout her back and hips). Petitioner reported she loses her breath walking a half block or when climbing a flight of stairs. Petitioner reported her breathing is more difficult in hot and humid weather. Petitioner reported she sometimes has an asthma attack when at rest. It was noted Petitioner weighed 250 pounds, following a 60 pound weight loss over the last year. All cervical spine, lumbar spine, and bilateral knee ranges of motion were noted to be reduced. A conclusion of a severe obstruction was noted following respiratory function testing. Conclusions of the following were noted: mild to moderate obesity, HTN, history of COPD and asthma (noted to be major problems), chronic lumbar pain, and musculoskeletal pain.

Hospital emergency room documents (Exhibits A11-A28) dated May 11, 2015, were presented. It was noted that Petitioner presented with complaints of dyspnea, ongoing for one week. It was noted that Petitioner received IV antibiotics and nebulizer treatments.

Petitioner testified she has joint damage to hips, knees, and shoulders from prolonged steroid use to treat her breathing problems. Petitioner also testified she has ongoing breathing difficulties which limit her abilities to ambulate and lift/carry. Petitioner's testimony was consistent with presented evidence.

It is found that Petitioner established significant impairment to basic work activities for a period longer than 12 months. Accordingly, it is found that Petitioner established having a severe impairment and the disability analysis may proceed to Step 3.

The third step of the sequential analysis requires a determination whether the Petitioner'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 Petitioner's impairments are listed and deemed to meet the 12 month requirement, then the Petitioner is deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

Petitioner's most prominent impairment appears to be breathing difficulties related to COPD and/or asthma. Listing 3.02 covers disabilities for chronic pulmonary insufficiency and reads:

**3.02 Chronic pulmonary insufficiency**

**A.** Chronic obstructive pulmonary disease due to any cause, with the FEV<sub>1</sub> equal to or less than the values specified in table I corresponding to the person's height without shoes.

**Table I**

<b>Height without Shoes (centimeters)</b>	<b>Height without Shoes (inches)</b>	<b>FEV<sub>1</sub> Equal to or less than (L,BTPS)</b>
161-165	64-65	1.25

Pulmonary sufficiency testing occurred on July 30, 2015, as part of a consultative examination (see Exhibits 48-49). Petitioner's best FEV<sub>1</sub> was 1.28. Based on Petitioner's height (65 inches per Petitioner's testimony and respiratory testing report), Petitioner's FEV<sub>1</sub> level is slightly higher than requirements of Listing 3.02 (A).

Accordingly, Petitioner does not meet Listing 3.02 (A). Petitioner also does not meet other respiratory listings (e.g. asthma (Listing 3.03), chronic restrictive ventilatory disease (Listing 3.02 (B))).

A listing for joint dysfunction (Listing 1.02) was considered based on Petitioner's complaints of various body pains. The listing was rejected due to a failure to establish that Petitioner is unable to ambulate effectively or has an inability to perform fine and gross movements with two extremities.

A listing for spinal disorders (Listing 1.04) was considered based on Petitioner's lumbar complaints. This listing was rejected due to a failure to establish a spinal disorder resulting in a compromised nerve root.

It is found that Petitioner failed to establish meeting or equaling a SSA listing. Accordingly, the analysis moves to step four.

The fourth step in analyzing a disability claim requires an assessment of the Petitioner's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if it is determined that a Petitioner can perform past relevant work. *Id.*

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

Petitioner presented a meager history of SGA earnings from the last 15 years. Petitioner testified she spent part of the time as a caretaker for her grandmother though Petitioner testified her wages did not amount to SGA earnings.

Petitioner testified her only employment amounting to SGA earnings from the last 15 years were 3 years spent as a shipping clerk/data entry. Petitioner testified her job was to insure truckers dropped off and picked up the proper loads. Petitioner testified her most physically demanding part was getting up and down throughout the day. Petitioner testified her employment required more standing than the job title of data entry would imply. Petitioner testified she spent a good portion of her work time looking for files at the bottom of file cabinets; Petitioner testified this activity required a lot of stooping and bending. Petitioner testified she sometimes spent 7½ hours standing in her 8 hour work shift. Petitioner testified she was sometimes expected to lift boxes of paper.

Petitioner testified she lost her employment due to medical reasons. Petitioner testified she would be unable to perform the standing and bending required of her former employment. Petitioner's testimony was consistent with presented evidence.

It is found that Petitioner is unable to return to former employment. Accordingly, the analysis may proceed to the final step/

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though 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. *Id.* 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. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.*

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.*



Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered non-exertional. 20 CFR 416.969a(a). Examples of non-exertional limitations 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 (e.g. 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) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2)

The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

Given Petitioner's age, education and employment history, a determination of disability is dependent on Petitioner's ability to perform light employment. Social Security Rule 83-10 states that the full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour workday.

Physician statements of restrictions were provided. SSR 96-2p states that if a treating source's medical opinion is well-supported and not inconsistent with the other substantial evidence in the case record, it must be given controlling weight (i.e. it must be adopted). Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers v. Commissioner*, 486 F. 3d 234 (6<sup>th</sup> Cir. 2007); *Bowen v Commissioner*.

On a Medical Examination Report dated August 5, 2014, Petitioner's physician opined that Petitioner was restricted as follows over an eight-hour workday, less than 2 hours of standing and/or walking, and less than 6 hours of sitting. Petitioner was restricted to occasional lifting/carrying of 10 pounds or less, never 20 pounds or more. No repetitive actions were restricted. Severe asthma was the stated basis for restrictions. It was noted that Petitioner's limitation(s) was expected to last 90 days. The stated restrictions were consistent with finding that Petitioner is unable to perform light employment.

Petitioner's respiratory test report from July 2015 stated that Petitioner has a "severe obstruction" (see Exhibits 48-49). Recurrent hospitalizations related to breathing difficulties were verified. The evidence was consistent with physician-stated restrictions. Petitioner verified an older history of spinal disease. Though outdated, it is improbable that Petitioner's condition significantly improved, particularly when factoring that Petitioner presumably lacked health insurance between the time of treatment in 2008 and the time Petitioner applied for MA benefits.

Petitioner's FEV1 was 1.28 ml. FEV1 measures the amount of air exhaled in 1 second following a forced breath. It is notable that Petitioner's FEV1 (1.28 ml) level only barely exceeded SSA listing requirements (1.28 ml). The close proximity to meeting SSA requirements tends to support a finding that Petitioner cannot perform light employment.

It is found that Petitioner is unable to perform light employment. Petitioner's testimony suggested that she is unable to perform even sedentary employment. For purposes of this decision, it will be presumed that Petitioner can perform sedentary employment.


Based on Petitioner's exertional work level (sedentary), age (approaching advanced age), education (high school equivalency with no direct entry into skilled employment), employment history (unskilled), Medical-Vocational Rule 201.12 is found to apply. This rule dictates a finding that Petitioner is disabled. Accordingly, it is found that MDHHS improperly found Petitioner to be not disabled for purposes of MA benefits.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that MDHHS improperly denied Petitioner's application for MA benefits. It is ordered that MDHHS

- (1) reinstate Petitioner's MA benefit application dated March 13, 2014, including retroactive MA benefits from December 2013;
- (2) evaluate Petitioner's eligibility for benefits subject to the finding that Petitioner is a disabled individual;
- (3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
- (4) schedule a review of benefits in one year from the date of this administrative decision, if Petitioner is found eligible for future benefits.

The actions taken by MDHHS are **REVERSED**.

  
**Christian Gardocki**  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human  
Services

Date Signed: **11/25/2015**

Date Mailed: **11/25/2015**

CG/tm

**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:

