

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-001875
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: March 05, 2015
County: Washtenaw

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, telephone hearing was held on March 05, 2015, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], her husband [REDACTED], and her authorized hearings representative [REDACTED] of [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist.

ISSUE

Did the Department of Human Services (Department) properly determine that the Claimant did not meet the disability standard for Medical Assistance (MA-P) based on disability?

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 October 7, 2014, the Claimant submitted an application for Medical Assistance (MA) benefits alleging disability.
2. On November 3, 2014, the Medical Review Team (MRT) determined that the Claimant did not meet the disability standard for Medical Assistance (MA-P) because it determined that she is capable of performing other work despite her impairments.
3. On November 17, 2014, the Department sent the Claimant notice that it had denied the application for assistance.
4. On January 29, 2015, the Department received the Claimant's hearing request, protesting the denial of disability benefits.
5. The Claimant is a 45-year-old woman whose birth date is [REDACTED].
6. Claimant is 4' 11" tall and weighs 200 pounds.

7. The Claimant attended school through the 9th grade.
8. The Claimant was not engaged in substantial gainful activity at any time relevant to this matter.
9. The Claimant has past relevant work experience working in a grocery store and as a school aid.
10. The Claimant's disability claim is based on central nervous system vascular accident.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, Rule 400.901 - 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because her claim for assistance has been denied. Mich Admin Code, R 400.903. Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. Department of Human Services Bridges Administrative Manual (BAM) 600 (July 1, 2013), pp 1-44.

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.

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 Medical Assistance and State Disability Assistance (SDA) programs. Under SSI, disability is defined as:

...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.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order.

STEP 1

Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is not disabled.

At step 1, a determination is made on 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 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, she is not disabled regardless of how severe her physical or mental impairments are and regardless of her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

The Claimant testified that she has not been employed since approximately 2005 and is not currently engaged in substantial gainful activity, which was not disputed by the Department during the hearing. Therefore this Administrative Law Judge finds that the Claimant is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

STEP 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 not disabled.

At step two, a determination is made 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). If the Claimant does not have a severe medically determinable impairment or combination of impairments, she is not disabled. If the Claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The Claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months, or result in death.

The Claimant is a 45-year-old woman that is 4' 11" tall and weighs 200 pounds. The Claimant alleges disability due to central nervous system vascular accident.

The objective medical evidence indicates the following:

The Claimant was hospitalized for a central nervous system vascular accident, also known as a stroke, from [REDACTED], through [REDACTED]. Medical records indicate that the Claimant has a history of stroke before this incident. Treating physicians found the Claimant to suffer from non-fluent aphasia and verbal apraxia. The Claimant's verbal responses were limited. Treating physicians determined that the Claimant had normal muscle tone and strength but does not use her right arm unless

instructed to. The Claimant is capable of using her right arm and is capable of unassisted ambulation.

On [REDACTED], treating physicians found the Claimant's verbal communications to be limited and she would give one word answers to any questions.

The Claimant testified that she is not capable of preparing simple meals, shopping for groceries, or caring for her personal needs without assistance. There was no objective medical evidence presented on the record refuting the Claimant's testimony with respect to her ability to perform activities of daily living.

The Claimant testified on the record but Claimant's testimony was limited to answering yes or no. On several occasions during the hearing, the Claimant would give a verbal answer while nodding her head in a manner inconsistent with her verbal answer. This Administrative Law Judge finds the Claimant was making an honest effort to answer questions and her expressions seemed to indicate that she was cooperating with the hearing to the best of her ability.

The evidence on the record indicates that the Claimant's was been diagnosed with central nervous system vascular accident by treating physicians, which has resulted in significant impairments to her ability to communicate orally.

This Administrative Law Judge finds that the evidence on the record as a whole supports a finding that the Claimant has not fully recovered from a stroke that cause her to be hospitalized in August of 2014. The Claimant's impairments limit her ability to speak and respond to coworkers in a routine work situation, which are considered basic work activities. 20 CFR 416.921(b).

Therefore, this Administrative Law Judge finds a severe physical impairment that has more than a de minimus effect on the Claimant's ability to perform work activities. The Claimant's impairments have lasted continuously, or are expected to last for twelve months.

STEP 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? If no, the analysis continues to Step 4.

At step three, a determination is made whether the Claimant's impairment or combination of impairments is of a severity to meet or medically equal 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 is of a severity to meet or medically equal 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.

The Claimant was hospitalized for a central nervous system vascular accident on [REDACTED], which resulted in a severe impairment to her ability to speak effectively. Upon further treatment on [REDACTED], treating physicians found the Claimant to be capable of limited verbal communications and able to give one word answers to questions. The objective medical evidence on the record supports a finding that the Claimant experienced a central nervous system vascular accident and more than 3 months later treating physicians have found her to continue to suffer from verbal aphasia resulting in effective speech or communication.


This Administrative Law Judge finds that the evidence on the record supports a finding that the Claimant's condition meets or equals a statutory listing under section 11.04 Central nervous system vascular accident of the federal code of regulations 20 CFR Part 404, Subpart P, Appendix 1.

This Administrative Law Judge finds that Claimant may be considered presently disabled at the third step. Claimant's condition meets or equals listing 11.04, due to ineffective speech or communication. This Administrative Law Judge will not continue through the remaining steps of the disability assessment.

Testimony on the record and the medical documentation support the finding that Claimant is disabled for purposes of the Medical Assistance (M.A.) benefits.

DECISION AND ORDER

Accordingly, the Department's eligibility determination is hereby **REVERSED** and the Department is **ORDERED** to initiate a review of the application dated October 7, 2014, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of its revised determination in writing. A review of this case shall be set for April of 2016.



Kevin Scully
Administrative Law Judge
for Nick Lyon, Acting DHS Director
Department of Human Services

Date Signed: **3/24/2015**

Date Mailed: **3/24/2015**

KS/las

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:

