

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

IN THE MATTER OF:



Reg. No.: 15-002318-R
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: March 18, 2015
County: Jackson

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

**DECISION AND ORDER ON REMAND
FROM KENT COUNTY CIRCUIT COURT**

This case is before an Administrative Law Judge of the Michigan Administrative Hearing System pursuant to an Order Remanding for a new hearing dated January 9, 2015, from the Honorable John G. McBain, Circuit Court Judge, Jackson County Circuit Court and pursuant to the provisions of MCL 400.9, MCL 400.37, MCL 400.43(a), MAC R 400.941 and MCL 24.201, *et seq.*

PROCEDUAL HISTORY

On March 13, 2014, a hearing was conducted by Administrative Law William A. Sundquist.

On March 18, 2014, a Hearing Decision was generated and mailed in this case that upheld the Department's denial of MA/Retro-MA.

On April 16, 2014, the Michigan Administrative Hearing System (MAHS) received Claimant's Authorized Representative's (AR) Motion for Reconsideration on the basis of a misapplication of law or policy that led to an erroneous decision.

On May 14, 2014, MAHS issued an Order of Dismissal because there was no legal basis upon which to grant a rehearing/reconsideration.

On January 9, 2015, the Hon. John G. McBain, Circuit Court Judge for Jackson County, entered an Order Remanding this issue for further factual determination.

On February 26, 2015, MAHS mailed Scheduling Order and Notice of Three-Way Telephone Hearing on Remand to Respondent's AR (Respondent is deceased) notifying him of the scheduled Rehearing on March 18, 2014, at 10:30am.

DECISION AFTER REHEARING

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, MCL 400.37, and Mich Admin Code Rule 400.909 upon an Order Granting Rehearing and Order Vacating a Hearing Decision generated by the assigned Administrative Law Judge (ALJ) at the conclusion of a hearing conducted on April 30, 2008, and mailed on June 12, 2009, in the above-captioned matter. The date for a new hearing having been assigned and due notice having been provided, an in-person hearing was conducted at the Ingham County DHS office, on August 20, 2013. Participants on behalf of Respondent included Mr. Hector Lugo of L&S Associates. Participants on behalf of the Department of Human Services (Department) included Lead Worker Sally Wilson.

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 March 26, 2013, Claimant filed an application for MA/Retro-MA benefits alleging disability.
2. On August 9, 2013, the Medical Review Team (MRT) denied Claimant's application for MA/Retro-MA. (Dept. Ex A, pp 51-52).
3. On August 22, 2013, the Department sent Claimant notice that her application for MA/Retro-MA had been denied. (Hearing Summary).
4. On October 2, 2013, Claimant filed a request for a hearing to contest the Department's negative action.
5. On December 19, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled.
6. Claimant was a 38 year old woman with a date of birth of [REDACTED].
7. Claimant died on May 16, 2013, from an indeterminate cause.
8. Claimant had an alcohol, drug abuse history and a smoked package of cigarettes a day.
9. Claimant was not working and had last worked in 2001.
10. Claimant alleged disability on the basis of affective psychosis, alcoholism, seizure related to alcohol withdrawal, chronic thrombocytopenia, anemia, anxiety, depressive disorder, opioid abuse, insomnia, and mood disorder.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, (DHS or department), 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 Reference Tables Manual (RFT).

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(a). 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 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). 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.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant 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).

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 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). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual

functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). 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). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

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).

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, Appendix 1, 12.00(C).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Claimant has not worked since 2001 as a waitress. Therefore, she is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). 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 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples 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. *Id.*

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). The severity requirement may still 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). 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 the present case, Claimant affective psychosis, alcoholism, seizure related to alcohol withdrawal, chronic thrombocytopenia, anemia, anxiety, depressive disorder, opioid abuse, insomnia, and mood disorder. As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s).

On June 14, 2011, Claimant was admitted to the hospital for suicidal ideation, alcohol abuse and questionable withdrawal symptoms. She was having some tremors from withdrawal symptoms. She denied any seizure-like activity. She was placed on CIWA pathway and was managed in the psychiatric ward. She was started on Antabuse. She tolerated the medication well and was educated on Antabuse and the lifestyle changes needed. Claimant was discharged on June 17, 2011, with a diagnosis of Axis I: alcohol dependence; alcohol-induced mood disorder; depression; rule out adjustment disorder with depression and anxiety; history of polysubstance use; Axis II: Deferred; Axis III: seizure disorder; effects of long-term drug use; Axis IV: improved coping skills; initiation of Antabuse treatment; establishment of follow-up for substance abuse issues; Axis V: GAF=45.

On September 27, 2011, Claimant's treating physician completed a Medical Examination Report on behalf of the Department. Claimant was diagnosed with anxiety, hypertension, seizures, depression, and alcohol/opioid abuse. The physician opined Claimant's condition was stable and she was able to meet her own needs in the home.

On December 16, 2012, Claimant was admitted to the hospital for alcohol intoxication and abrasions. She voluntarily went to the emergency department wanting to give up alcoholism. She was placed on CIWA pathway and the electrolyte disturbance was corrected. On December 18, 2012, she received IV Ativan. During the day, her tremors and withdrawal improved. She was discharged on oral Ativan. She was discharged on December 18, 2012, with a diagnosis of alcohol abuse, admitted for alcohol detox; history of alcohol withdrawal seizures; hypokalemia, improved, stable on discharge; hypomagnesemia, improved; mild thrombocytopenia on admission secondary to alcoholism, stable; alcohol-induced hepatitis, improved; right ankle sprain, secondary to fall, no fractures on x-ray; and abdominal pain secondary to alcohol-induced hepatitis, improved.

On [REDACTED], Claimant was admitted to the hospital after presenting to the emergency room with alcohol withdrawal and hematemesis. She denied any seizures. She was discharged on [REDACTED], with a diagnosis of acute alcohol withdrawal; hematemesis, likely secondary to nausea, vomiting and possible underlying gastritis; history of chronic thrombocytopenia; elevated AST and ALT secondary to alcohol ingestion; hyperkalemia; and normocytic anemia.

On [REDACTED], Claimant was taken to the emergency department in a C-collar from EMS due to seizures she had at home. She has a previous history of seizure disorder and alcoholism. The examining physician opined that Claimant most likely fell at home and bit her tongue and her tongue was slightly swollen and she had a bruise on the outside of her head. She had a subtherapeutic Depakote level. She stated she had taken an extra 500 mg of Depakote after having her seizure. She was evaluated by neurology and it was recommended that she be switched to Keppra. Side effects of Keppra were discussed with her, including but not limited to possible drowsiness and possible suicidal ideations. She was recommended to seek immediate help if any suicidal thought and be careful if drowsy. Claimant stated she had not had anything to drink for the past 10 days. She had significant ecchymosis around her eyes consistent with a "raccoon eyes." Urinalysis was negative. Drug screen was positive for opiates, alcohol was less than 0.0101. She had a tremor secondary to alcohol withdrawal. She denied using any narcotics, contrary to the past hospital records documenting opiate abuse. The neurologist opined that the seizures were brought on due to alcohol consumption or opiate related. The neurologist indicated the seizures had been uncontrolled, due to subtherapeutic Depakote level. The neurosurgeon opined Claimant might have underlying epilepsy, but she did not have any seizures before she started drinking heavily, so unlikely. Claimant was discharged on [REDACTED], with a diagnosis of acute seizures; history of previous seizure disorder, likely secondary and alcohol abuse; alcohol abuse; possible alcohol withdrawal; hypertension; headache; thrombocytopenia secondary to alcoholic liver disease; previous history of hematemesis secondary to alcoholic gastritis; depression, and polysubstance abuse.

On [REDACTED], Claimant's treating physician completed a Medical Examination Report on behalf of the Department. Claimant was diagnosed with anemia, alcohol withdrawal seizure, alcohol abuse, affective psychosis, anxiety, depressive disorder, opioid abuse, insomnia, and mood disorder. The physician opined Claimant's condition was stable and she had no physical or mental limitations.

The medical evidence has established that Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Claimant has alleged mental disabling impairments due to depression, anxiety, and alcoholism.

Listing 12.00 (mental disorders) were considered in light of the objective evidence. Based on the foregoing, it is found that Claimant's impairment(s) do not meet the intent and severity requirement of a listed impairment; therefore, Claimant cannot be found disabled at Step 3. Accordingly, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the individual's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). 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 are 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.

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

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of original hearing, Claimant was 38 years old and was, thus, considered to be a younger individual for MA-P purposes. Claimant had a high school education. Disability is found if an individual is unable to adjust to other work. *Id.*

At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). 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).

In this case, the evidence reveals that Claimant suffers from affective psychosis, alcoholism, seizure related to alcohol withdrawal, chronic thrombocytopenia, anemia, hypertension, anxiety, depressive disorder, opioid abuse, insomnia, and mood disorder.

Claimant's authorized hearing representative argued that Claimant committed suicide based on the medication Keppra that she was prescribed. While hospital records indicate one of the side effects to Keppra is suicidal ideation, there is no proof that

Claimant committed suicide. The pathologist found her cause of death to be indeterminate.

Based on the opinions of Claimant's two treating physicians, and supported by numerous hospitalization records, this Administrative Law Judge finds Claimant did not have a physical or mental impairment that met the definition of disability.

After review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 202.17, it is found that Claimant is not disabled for purposes of the MA-P program at Step 5. However, death does establish a person's disability for the month of their death. (BEM 260, p 1 (7/1/2014)). Therefore, Claimant is eligible for disability benefits for the month of May, 2013.


DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Claimant disabled for the month of May, 2013.

Accordingly, the Department's decision is **REVERSED**, and it is ORDERED that:

The Department shall process Claimant's March 26, 2013, MA/Retro-MA application, and shall award her all the benefits she may be entitled to receive for the month of May, 2013, as long as she meets the remaining financial and non-financial eligibility factors.

IT IS SO ORDERED.



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

Date Signed: **4/3/2015**

Date Mailed: **4/3/2015**

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NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

cc:

