

5. Claimant alleged physical disabling impairment due to diabetes, kidney disease, back pain, and vision problems.
6. At the time of hearing, Claimant was 54 years old with a [REDACTED] birth date; she was 5'4" in height and weighed 131 pounds.
7. Claimant is a high school graduate and can read, write and do basic math.
8. Claimant has an employment history of work as a bar manager, cook, waitress, factory worker, and deli employee.
9. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

MA-P benefits are available to disabled individuals. BEM 105 (January 2014), p. 1; BEM 260 (July 2014), pp. 1-4. Disability for MA-P purposes is defined as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). To meet this standard, a client must satisfy the requirements for eligibility for Supplemental Security Income (SSI) receipt under Title XVI of the Social Security Act. 20 CFR 416.901.

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

- (1) whether the individual is engaged in SGA;
- (2) whether the individual's impairment is severe;
- (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404;

- (4) whether the individual has the residual functional capacity to perform past relevant work; and
- (5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work.

20 CFR 416.920(a)(1) and (4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

As outlined above, the first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Claimant testified that she stopped working entirely in March 2015. She testified that she was working as a waitress until March 2015 but her physical condition made her unable to consistently engage in her employment as a waitress, particularly after February 2014, when she was hospitalized and had to stop working. Claimant's records indicate that, when she did work, she worked 12 hours weekly as a waitress (Exhibit A, p. 5).

In order to be engaged in SGA, a non-blind individual must have gross monthly earned income in excess of \$1,070 in 2014 and \$1,090 in 2015. <http://www.ssa.gov/OACT/COLA/sga.html>. In this case, there is insufficient evidence on the record to conclude that Claimant engaged in SGA during the period that assistance

was sought. Therefore, Claimant is not ineligible under Step 1 and the analysis continues to Step 2.

Step Two

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

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). An impairment, or combination of impairments, is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a); see also *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985). Basic work activities means the abilities and aptitudes necessary to do most jobs, including (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the *de minimus* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28. If such a finding is not clearly established by medical evidence or if the effect of an impairment or combination of impairments on the individual's ability to do basic work activities cannot be clearly determined, adjudication must continue through the sequential evaluation process. *Id.*; SSR 96-3p.

In the present case, Claimant alleges physical disabling impairment due to diabetes, kidney disease, back pain, and vision problems. The medical evidence presented at the hearing was reviewed and is summarized below.

██████████ Claimant went to the emergency room complaining of flu-like symptoms and was treated and released (Exhibit A, pp. 102-110).

██████████ Claimant was hospitalized for abdominal pain. She was diagnosed with intractable nausea and vomiting with acute renal failure secondary to severe dehydration; uncontrolled insulin-dependent diabetes mellitus; acute accelerated hypertension; acute hyponatremia, hypothyroidism; anemia; and uncontrolled hyperglycemia. A ██████████ chest and abdominal x-ray showed no acute cardiopulmonary process and nonspecific nonobstructive bowel gas pattern. A ██████████ CT scan of the abdomen and pelvis showed no evidence of obstructive uropathy bilaterally. A ██████████ ultrasound of the kidneys and bladder showed no mass or hydronephrosis. Diagnostic testing also showed degenerative changes of the spine, worst at L5/S1. Claimant's blood pressure improved during the hospitalization, as did her symptoms. She was released with new blood pressure medication and advised to control her diabetes. (Exhibit A, pp. 18-101, 111).

From ██████████ Claimant was hospitalized following ongoing daily vomiting. She was discharged with diagnoses of acute on chronic kidney disease, uncontrolled type 2 diabetes mellitus, vomiting, anemia, and increased anion gap metabolic acidosis. Claimant's blood pressure and blood sugar levels were brought under control and Claimant was discharged in good condition. (Exhibit 2, pp. 7-15).

On ██████████ Claimant's ophthalmologist completed an eye examination report, DHS 49I, showing that Claimant had diagnoses of right eye PDR (proliferative diabetic retinopathy), vitreous hemorrhage, and diabetic macular edema and left eye PDR. With best correction, Claimant's distance vision is 20/30 in the right eye and 20/50 in the left eye. Her visual fields are not constricted. Testing was attached. The doctor recommended panretinal photocoagulation (PRP) in both eyes and possible focal laser once the heme cleared (Exhibit 2, pp. 1-6).

On ██████████, Claimant visited her primary care physician, admitting that she was an insulin-dependent diabetic but had not been on any medication for two years. She also admitted that she had stopped taking her blood pressure medication. She was experiencing increased thirst and urination and blurry vision. The ongoing vomiting that had led to her ██████████ hospitalization had resolved. At the April 10, 2015, follow-up visit, the doctor noted improved blood pressure symptoms and insulin compliance (Exhibit 1, pp. 34-38).

██████████, progress notes from the nephrologist who first examined Claimant on ██████████ noted that Claimant had a longstanding history of poorly managed diabetes mellitus due to lack of insurance resulting in profound uncontrolled hyperglycemia. The doctor concluded that Claimant had chronic kidney disease stage IV to V secondary to diabetic nephropathy, anemia of chronic kidney disease, diabetic retinopathy, postural hypotension, probably reflection of diabetic

autonomic neuropathy, dyslipidemia, history of hypothyroidism, and type 1 diabetes mellitus (Exhibit a, pp. 29-33).

On [REDACTED], Claimant's primary care physician completed a medical examination report, DHS-49, showing that Claimant was diagnosed with diabetes mellitus, insulin-dependent and chronic kidney disease, stage 4-5. She also indicated that Claimant suffered from diabetic neuropathy and retinopathy. The doctor indicated that Claimant's condition was deteriorating and identified the following limitations: (i) she could occasionally lift less than 10 pounds but never 10 pounds or more; (ii) she could stand and/or walk less than 2 hours in an 8-hour day; (iii) she could sit less than 6 hours in an 8-hour day; (iv) she could not use either hand or arm for reaching, pushing/pulling, or fine manipulating; (v) she could not use either leg or foot to operate foot controls (Exhibit 1, pp. 2-3). The doctor's records also showed diagnosis of hyperparathyroidism (Exhibit 1, pp. 14, 16, 20, 23, 25). An [REDACTED] ultrasound of the kidneys showed chronic kidney disease, no pelvocaliectasis (Exhibit 1, p. 26). A [REDACTED] abdominal MRI in response to Claimant's persistent abdominal pain, nausea and vomiting showed nothing to indicate any acute intra-abdominal inflammatory process and no focal bowel abnormality (Exhibit 1, p. 27).

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

Step Three

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

Based on the objective medical evidence presented, Listings 2.00 (specials senses and speech), particularly 2.04 (loss of visual efficiency); 6.00 (genitourinary disorders), particularly 6.05 (chronic kidney disease, with impairment of kidney function) and 6.09 (complications of chronic kidney disease); 9.00 (endocrine disorders); and 11.00 (neurological system), particularly 11.14 (peripheral neuropathies) were considered.

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

Residual Functional Capacity

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

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

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

Sedentary work.

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, [an individual] must have the ability to do substantially all of these activities.

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

Medium work.

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, ... he or she can also do sedentary and light work.

Heavy work.

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, ... he or she can also do medium, light, and sedentary work.

Very heavy work.

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

20 CFR 416.967.

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of nonexertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi).

In this case, Claimant alleges exertional limitations. She testified that she had balance problems when walking; she could stand for one-half hour at a time; she could bend or squat only if she could lean on something; she could sit for a few hours but it hurt her back; and she could lift up to 25 pounds but her hands frequently locked up. She lived with her husband and tried to do chores, but admitted that it took her much longer than it used to. Claimant's husband indicated that Claimant was unable to do many of the chores she used to do but she was unwilling to admit her limitations. Claimant used a shower chair.

The DHS-49 completed by Claimant's doctor supports limitations. The doctor indicated that Claimant could (i) occasionally lift less than 10 pounds but never 10 pounds or more; (ii) stand and/or walk less than 2 hours in an 8-hour day; (iii) sit less than 6 hours in an 8-hour day; (iv) not use either hand or arm for reaching, pushing/pulling, or fine manipulating; (v) not use either leg or foot to operate foot controls (Exhibit 1, pp. 2-3).

Ultimately, after review of the entire record to include Claimant's testimony, it is found, based on Claimant's physical condition, that Claimant maintains the physical capacity to, at best, perform sedentary work as defined by 20 CFR 416.967(a).

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

Step Four

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

As determined in the RFC analysis above, Claimant is limited to no more than sedentary work activities. Claimant's work history in the 15 years prior to the application consists of work as a bar manager, cook, waitress, factory worker, and deli employee. In light of the entire record and Claimant's RFC limiting her to sedentary work, it is found that Claimant is unable to perform past relevant work. Accordingly, Claimant cannot be found disabled, or not disabled, at Step 4 and the assessment continues to Step 5.

Step 5

In Step 5, an assessment of Claimant's RFC 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). If the individual can adjust to other work, then there is no disability. Disability is found if an individual is unable to adjust to other work. *Id.*

At this point in the analysis, the burden shifts from Claimant to the Department to present proof that Claimant has the RFC to obtain and maintain SGA. 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).

When the impairment(s) and related symptoms, such as pain, only affect the ability to perform the exertional aspects of work-related activities, Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, 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, Claimant, who was born [REDACTED], was 53 years old at the time of application and 54 years old at the time of hearing and, thus, considered to be closely approaching advanced age (age 50-54) for purposes of Appendix 2. She is a high school graduate and can read, write and do basic math. Her prior employment involves unskilled labor with no transferable skills. As discussed above, she maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform sedentary work activities. She has no limitations on her mental ability to perform work activities. After review of the entire record, including Claimant's testimony, and in consideration of Claimant's age, education, work experience, and physical RFC, Claimant is considered disabled under Appendix 2, 201.12. Therefore, Claimant is found disabled at Step 5 for purposes of MA-P benefit program.

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Claimant disabled for purposes of the MA-P benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Process Claimant's May 13, 2014 MA-P application, with request for retroactive coverage to February 2014, to determine if all the other non-medical criteria are satisfied and notify Claimant of its determination;
2. Supplement Claimant for lost benefits, if any, that Claimant was entitled to receive if otherwise eligible and qualified;
3. Review Claimant's continued eligibility in July 2016.



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

Date Signed: **6/30/2015**

Date Mailed: **7/01/2015**

ACE / pf

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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from MAHS within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion. MAHS **MAY** grant a party's Request for Rehearing or Reconsideration when one of the following exists:

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

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

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

Attention: MAHS Rehearing/Reconsideration Request

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

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

CC:

[REDACTED]