



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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Date Mailed: September 3, 2021
MOAHR Docket No.: 21-002022
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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; 42 CFR 431.200 to 431.250. After due notice, a telephone hearing was held on May 20, 2021. The Petitioner was represented by Sue Larzelere, Appeals Specialist, Advomas. The Department of Health and Human Services (Department) was represented by Kari Gingrich, Eligibility Specialist.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-1,596. The hearing record was left open for additional medical documentation to be submitted. No additional documentation was received.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the Medical Assistance (MA) benefit program.

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 ██████████ 2020, Petitioner applied for MA and reported that she was disabled. Petitioner also requested retroactive coverage for March 2020. (Exhibit A, pp. 3 and 26-34)
2. On February 13, 2021, the Medical Review Team/Disability Determination Services (MRT/DDS) found Petitioner not disabled. (Exhibit A, pp. 36-78)
3. On February 19, 2021, a Notice of Case Action was issued informing Petitioner that MA was denied. (Exhibit A, pp. 11-13)

4. On March 24, 2021, the Department received Petitioner's timely written request for hearing. (Exhibit A, pp. 4-5; Hearing Request unnumbered pages)
5. Petitioner alleged disabling impairments including: diabetes, asthma, hypertension, back and hip pain, and cellulitis on lower stomach. (Exhibit A, pp. 15 and 85)
6. On an August 21, 2020 Medical-Social Questionnaire Petitioner reported she was ■ years old with a ■■■■■■■■■■, 1979, birth date; was ■■■ in height; and weighed ■■■ pounds. (Exhibit A, pp. 84-85)
7. Petitioner completed the 12th grade and has a work history including direct care worker, caregiver, cashier, home health aide. (Exhibit A, p. 88)
8. Petitioner'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 Health and 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.

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 416.913. An individual's statements about pain or other symptoms are not, in and of themselves, sufficient to establish disability. 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) daily activities; (2) the location/duration/frequency/intensity of an applicant's pain or other symptoms; (3) precipitating and aggravating factors; (4) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain or other symptoms; (5) any treatment other than medication that the applicant has received to relieve pain or other symptoms; (6) any measures the applicant uses to relieve pain or other symptoms; and (7) other factors concerning the applicant's functional limitations and restrictions due to pain or other symptoms. 20 CFR 416.929(c)(3). The applicant's pain or other symptoms must be considered 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 (i.e., 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 three to step four. 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 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 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 416.922(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(a)(1)(iv)(vi)(vii).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Petitioner is not involved in substantial gainful activity. Therefore, Petitioner is not ineligible for disability benefits under Step 1.

The severity of Petitioner's alleged impairment(s) is considered under Step 2. Petitioner 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 416.920(a)(4)(ii); 20 CFR 416.920(c). 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). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.922(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 Petitioner's age, education, or work experience, the impairment would not affect the Petitioner's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Petitioner alleged disabling impairments including: diabetes, asthma, hypertension, back and hip pain, and cellulitis on lower stomach. (Exhibit A, pp. 15 and 85) While some older medical records were submitted and have been reviewed, the focus of this analysis will be on the more recent medical evidence.

February 2019 to August 2019 records from Alcona Health Center document diagnosis and treatment of multiple conditions including: bronchitis, diabetes, diabetic dermatitis, body mass index 60.0-69.9, onychogryphosis, hyperlipidemia, otitis externa, sinusitis, polycystic ovarian syndrome, carpal tunnel syndrome, candidiasis, obesity, and depression. During an [REDACTED] 2019 office visit Petitioner was sent to the emergency room due to high blood sugar levels. (Exhibit A, pp. 284-309)

Petitioner was seen in the emergency department on [REDACTED], 2019 for hyperglycemia, poorly controlled diabetes, and obesity. (Exhibit A, pp. 376-380, 405, and 1173-1236)

Petitioner was seen in the emergency department on [REDACTED] 2019 for acute left side mastoiditis, acute left otitis media contributing to acute left sided mastoiditis, history of asthma, history of diabetes, history of hypertension, and morbid obesity with a BMI of 48.44. (Exhibit A, pp. 371-375, 403-404, and 1137-1172)

Petitioner was seen in the emergency department on [REDACTED] 2019 for acute left otitis media with left mastoiditis and accelerated hypertension. (Exhibit A, pp. 1314-1337)

Petitioner was seen in the emergency department on [REDACTED] 2019 for acute left otitis media with effusion, left mastoiditis, and accelerated hypertension. (Exhibit A, pp. 395-402, and 1280-1313)

Petitioner was seen by an audiologist at Michigan Medicine in July and October 2019. On [REDACTED], 2019, Petitioner had an audiology assessment. Petitioner had mild mixed hearing loss in the right ear and severe mixed loss in the left ear. Petitioner also had bilateral chronic otitis media with otitis externa in the left ear. The October 11, 2019 progress note indicates the otitis media responded well to topical treatment and the otitis externa of the left ear significantly improved with regular vinegar-water irrigations. (Exhibit A, pp. 223-230 and 392-394)

Petitioner was seen in the emergency department on [REDACTED] 2019 for acute symptomatic rectal pain of uncertain etiology, rectal blood, hyperglycemia with history of diabetes, obesity with a BMI of 50.6, and fissure versus hemorrhoid that could not be discerned or differentiated at that time. (Exhibit A, pp. 386-391 and 1247-1279)

Petitioner was seen in the emergency department on [REDACTED] 2019, because she thought something had flown into her left eye when she was driving with the window open. (Exhibit A, pp. 408-417)

Petitioner was seen in the emergency department on [REDACTED] 2019, for rectal abscess, constipation, nausea with vomiting, and generalized abdominal pain. (Exhibit A, pp. 1338-1374)

Petitioner was seen in the emergency department on [REDACTED] 2019 for acute abdominal pain suspect secondary to dysmenorrhea, morbid obesity, polycystic ovary syndrome, and diabetes. (Exhibit A, pp. 367-370 and 1375-1406)

January 2020 through August 2020 records from Alcona Health Center document diagnosis and treatment of multiple conditions including: diabetes, severe obesity, cellulitis of abdominal wall, hypertension, candidiasis, ear infection, depression, and anxiety. Difficulty with affording medication was also noted due to Petitioner not having insurance. (Exhibit A, pp. 186-191 and 246-283)

Petitioner was seen in the emergency room [REDACTED] 2020 for hyperglycemia and headache. (Exhibit A, pp. 363-366 and 418-482)

Petitioner was seen in the emergency room [REDACTED] 2020 for acute cystitis. (Exhibit A, pp. 360-362 and 483-508)

Petitioner was hospitalized [REDACTED], 2020 for cellulitis of her abdominal pannus, super morbid obesity with a BMI of 58, poorly controlled diabetes, hypertension, and hyperlipidemia. (Exhibit A, pp. 340-359, 384-385, 509-909, 1134-1136, 1237-1239, 1241-1246, 1407-1413, and 1415-1579)

June and September 2020 records from the infectious disease, wound, and hyperbaric center show treatment for severe streptococcal-appearing cellulitis of the abdominal wall involving large pannus with focal ulcerative area on the right mid abdomen. (Exhibit A, pp. 202-205 and 1585-1596)

On [REDACTED] 2020, Petitioner attended a consultative mental status examination. Petitioner's diagnoses were major depressive disorder, social anxiety disorder, obesity, diabetes, and history of cellulitis. Based upon the examination, Petitioner is capable of: understanding and remembering instructions, locations and work like procedures; attending and concentrating sufficiently to carry out instructions and sustain a full work week; interacting appropriately with co-workers and supervision; adhering to basic standards of neatness and cleanliness; and adjust to physical changes in a work environment. (Exhibit A, pp. 207-212)

Petitioner was hospitalized [REDACTED], 2021 for left lower abdominal cellulitis with ulceration, uncontrolled diabetes, morbid obesity, hypertension, hyperlipidemia, and recent right abdomen cellulitis. (Exhibit A, pp. 192-201)

As previously noted, Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Petitioner has presented medical evidence establishing that she does have some limitations on the ability to perform basic work activities. The medical evidence has established that Petitioner has an impairment, or combination thereof, that has more than a *de minimis* effect on Petitioner's basic work activities. Further, the impairments have lasted, or can be expected to last, continuously for 12 months; therefore, Petitioner is not disqualified from receipt of MA benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if Petitioner's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms recent diagnosis and treatment of multiple impairments including: diabetes, diabetic dermatitis, candidiasis, morbid obesity, onychogryphosis, hyperlipidemia, bilateral chronic otitis media, otitis externa, left mastoiditis, mild mixed hearing loss in the right ear and severe mixed loss in the left ear, sinusitis, polycystic ovarian syndrome, abdominal pain, rectal pain, carpal tunnel syndrome, depression, and anxiety.

Based on the objective medical evidence, considered listings included: 2.10 hearing loss not treated with cochlear implantation; 8.04 chronic infections of skin or mucous membranes; 9.00 endocrine disorders; 12.04 depressive, bipolar, and related disorders; and 12.06 anxiety and obsessive-compulsive disorders. However, the medical evidence was not sufficient to meet the intent and severity requirements of either or these listings, or any other listing, or its equivalent. Accordingly, Petitioner cannot be found disabled, or not disabled at Step 3; therefore, Petitioner's eligibility is considered under Step 4. 20 CFR 416.905(a).

Before considering the fourth step in the sequential analysis, a determination of the individual's residual functional capacity ("RFC") is made. 20 CFR 416.945. An individual's RFC is the most he/she can still do on a sustained basis despite the limitations from the impairment(s). *Id.* The total limiting effects of all the impairments, to include those that are not severe, are considered. 20 CFR 416.945(e).

To determine the physical demands (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 (exertional requirements, i.e., sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered non-exertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, individual's residual functional capacity is compared with the demands of past relevant work. *Id.* If an

individual can no longer do past relevant work, the same residual functional capacity assessment, along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty to function 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). 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.*

The evidence confirms recent diagnosis and treatment of multiple impairments including: diabetes, diabetic dermatitis, candidiasis, morbid obesity, onychogryphosis, hyperlipidemia, bilateral chronic otitis media, otitis externa, left mastoiditis, mild mixed hearing loss in the right ear and severe mixed loss in the left ear, sinusitis, polycystic ovarian syndrome, abdominal pain, rectal pain, carpal tunnel syndrome, depression, and anxiety.

Petitioner was not present to testify at the hearing. Petitioner's representative explained that Petitioner had been in the hospital just prior to the hearing date. (Appeals Specialist Testimony)

After review of the entire record it is found, at this point, that Petitioner has a combination of exertional and non-exertional limitations and does not maintain the residual functional capacity to perform sedentary work as defined by 20 CFR 416.967(a) on a sustained basis.

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 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 is considered. 20 CFR 416.960(b)(3).

Petitioner has a work history including direct care worker, caregiver, cashier, home health aide. (Exhibit A, p. 88) In light of the entire record and Petitioner's RFC (see above), it is found that Petitioner is not able to perform her past relevant work.

Accordingly, the Petitioner cannot be found disabled, or not disabled, at Step 4; therefore, the Petitioner's eligibility is considered under Step 5. 20 CFR 416.905(a).

In Step 5, an assessment of Petitioner'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 the application, Petitioner was ■ years old and, thus, considered to be a younger individual for disability purposes. Petitioner completed the 12th grade and has a work history including direct care worker, caregiver, cashier, home health aide. (Exhibit A, pp. 84-88) 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 Petitioner to the Department to present proof that the Petitioner 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).

As noted above, Petitioner has a combination of exertional and non-exertional limitations and does not maintain the residual functional capacity to perform sedentary work as defined by 20 CFR 416.967(a) on a sustained basis. After review of the entire record, and in consideration of Petitioner's age, education, work experience, RFC, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II], as a guide Petitioner is found disabled at Step 5.

In this case, the Petitioner is found disabled for purposes of MA benefits, as the objective medical evidence does establish a physical and/or mental impairment that meet the federal SSI disability standard of 12 months for the ■ 2020 MA application. In light of the foregoing, it is found that Petitioner's impairments did preclude work at the above stated level for at least 12 months.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner disabled for purposes of the MA benefit program.

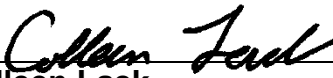
DECISION AND ORDER

Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE THE ORDER WAS ISSUED:

1. Initiate a review of the application dated [REDACTED], 2020, for MA and the application for retroactive MA, if not done previously, to determine Petitioner's non-medical eligibility. The Department shall inform Petitioner of the determination in writing. A review of this case shall be set for October 2022.

CL/ml



Colleen Lack
Administrative Law Judge

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

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

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

Via Electronic Mail

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