

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No.: 2009-23548
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
July 15, 2009
Macomb County DHS (12)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on July 15, 2009. The Claimant appeared and testified. The Claimant was represented by attorney [REDACTED]. [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") and State Disability Assistance ("SDA") programs?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Claimant submitted an application for public assistance seeking Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefits on February 5, 2009.

2. On March 23, 2009, the Medical Review Team (“MRT”) determined the Claimant was not disabled for purposes of the MA-P and SDA benefits. (Exhibit 1, pp. 43, 44)
3. On March 26, 2009, the Department sent an Eligibility Notice to the Claimant informing her that she was found not disabled. (Exhibit 3)
4. On April 6, 2009, the Department received the Claimant’s written Request for Hearing. (Exhibit 4)
5. On June 3, 2009, the State Hearing Review Team (“SHRT”) determined the Claimant not disabled. (Exhibit 5)
6. The Claimant’s alleged physical disabling impairment(s) are due to severe, chronic back pain, arthritis, bilateral knee pain, hypertension, colitis, incontinence, cysts, renal mass, kidney stones, colitis, obesity, and uterine cancer.
7. The Claimant’s alleged mental impairments are due to anxiety and depression.
8. At the time of hearing, the Claimant was 48 years old with a [REDACTED] birth date; was 5’ in height; and weighed 226 pounds.
9. The Claimant is a high school graduate with a prior employment history of an office/clerical worker and care provider.
10. The Claimant’s impairment(s) have lasted, or are expected to last, continuously for a period of 12-months or longer.

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 of Human Services (“DHS”), formally known as the Family Independence Agency, pursuant to MCL 400.10 *et seq* and MCL 400.105. Department policies are found in the Program

Administrative Manual (“PAM”), the Program Eligibility Manual (“PEM”), and the Program Reference Manual (“PRM”).

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 416.929(a)

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 applicants 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 (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 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 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 416.921(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)

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a) First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1) When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2) Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2) Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1) In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3) The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4) A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d) If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder. 20 CFR 416.920a(d)(2) If the

severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

As outlined above, the first step looks at the individual's current work activity. An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) In the record presented, the Claimant is not involved in substantial gainful activity therefore is not ineligible for disability under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant 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, the Claimant alleges physical disability due to severe, chronic back pain, arthritis, bilateral knee pain, hypertension, colitis, incontinence, cysts, renal mass, kidney stones, colitis, obesity, and uterine cancer. The Claimant asserts mental disabling impairments due to anxiety and depression.

On [REDACTED], the Claimant was evaluated after an endometrial cancer diagnosis for small multiple right-sided lung nodules. The etiology of the lung nodules was not clear (either non-specific benign incidental findings or related to the endometrial cancer). A recommendation to go forward with the surgery and to follow-up with a CAT scan was documented.

On [REDACTED], the Claimant was admitted to the hospital to undergo a full hysterectomy due to uterine cancer. The cancer was noted to be in the early stages although resection of the Claimant's uterus, fallopian tubes and ovaries was performed. The Claimant was discharged on [REDACTED] in stable condition.

On [REDACTED], a CT on the Claimant's pelvis was performed, post hysterectomy and bilateral oophorectomy. The study found no new or recurrent disease but documented tiny hypodensity in the right hepatic lobe and spleen which were too small to adequately characterize but unchanged from a comparison study from [REDACTED].

On [REDACTED], the Claimant attended a follow-up oncology appointment, post-hysterectomy. The Claimant's diarrhea, which was a "problem" prior to surgery, was noted as markedly worse since radiation therapy. Continued loose bowels were documented as well as the need for a GI evaluation. Ultimately, increased radiation treatments were recommended.

On [REDACTED], a digital mammogram was performed on the Claimant due to previous abnormal findings. The results revealed clustered coarse heterogeneous, punctuate and round calcifications in the lower outer quadrant, likely benign.

On or about [REDACTED], a CT scan of the Claimant's chest was performed and compared with a [REDACTED] report as follow-up for lung nodules. The test found stable appearance of small subcentimeter pulmonary nodules with no acute process demonstrated.

On [REDACTED], x-rays of the lumbar spine was performed which found moderate degenerative changes without fracture or subluxation.

On this same date, x-rays were taken of the Claimant's knees. The right and left knees were found to have moderate joint narrowing with associated sclerosis and minimal osteophyte formation.

On [REDACTED], the Claimant had a biopsy of her rectum, and cecum which revealed a diffuse active colitis pattern of injury with focal cryptitis, diffuse architectural changes, goblet cell depletion, and inflamed lamina propria. The findings were suggestive of inflammatory bowel disease.

On [REDACTED], an ultrasound was performed on the Claimant's abdomen which was unremarkable. On this same date, a retroperitoneal ultrasound was also performed which documented a hypochoic either cyst and/or mass within the left mid-kidney. A CT scan was recommended for further evaluation.

On [REDACTED], a Medical Needs form was completed by a treating provider on behalf of the Claimant. The current diagnoses were listed as uterine cancer, anemia, colitis, anxiety, pulmonary masses, osteoarthritis (back and knee), kidney mass, and breast mass. The Claimant was found unable to perform any job due to multiple medical appointments to follow-up on acute/chronic illnesses and emotion stress limits concentration, focus, and memory.

On this same date, [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The same diagnoses were listed as above. The physical examination listed the Claimant as obese with depression and anxiety. The Claimant's condition was deteriorating and she was limited to occasionally lifting/carrying 10 pounds; standing and/or walking at least 2 hours during an 8 hour workday; sitting for about 6 hours during the same time period; with no restrictions on the Claimant's ability to perform repetitive actions with her hands/arms and feet/legs. The Claimant's sustained concentration and memory were limited due to increased stress over ongoing treatment and evaluations to include chronic conditions, breast and renal mass.

On [REDACTED], a CT scan of the Claimant's abdomen (without contrast) and pelvis (with contrast) was performed. Minimal dependent atelectatic changes in both lung bases were noted as well as multiple tiny calcifications. A small hypodensity was noted in the right lobe likely representing a cyst was documented. Tiny non-obstructing intrarenal calculi on the kidneys were documented believed to be cysts. Multiple non-enlarged mesenteric and retroperitoneal lymph nodes were revealed. Degeneration within both hips and spine was documented.

On [REDACTED], the Claimant had a bone scan which was compared with the [REDACTED] CT scan of the abdomen and pelvis. Sites of increased radiotracer uptake namely

the bilateral shoulders, knees, ankles, and feet were noted and attributed to degenerative changes. No unusual sites of radiotracer uptake suspicious for metastatic disease were found with normal excretory pattern in the bilateral kidneys.

On [REDACTED], the Claimant had a digital mammogram of her left breast which was compared to films from [REDACTED], [REDACTED], and [REDACTED]. Focal asymmetry and round calcifications in the lower left inner quadrant was noted without evidence of malignancy.

On [REDACTED], the Claimant underwent an excision of the abdominal wall mass without complication.

On [REDACTED], the Claimant was examined by an orthopedic physician who reviewed the December x-rays which showed a bone-on-bone deformities of the patella, particularly at the lateral facet and at the femoral condylar area, more prominent on the right than left. The D.O. noted that the “cartilage is pretty much gone.” Arthroscopic debridement and patellofemoral arthroplasty were discussed.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some medical evidence establishing that she does have some physical and mental limitations on her ability to perform basic work activities. The medical evidence has established that the 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, the 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 Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged physical and mental disabling impairments due, in part, to back and leg pain.

Listing 1.00 defines musculoskeletal system impairments. Disorders of the musculoskeletal system may result from hereditary, congenital, or acquired pathologic processes.

1.00A Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases. 1.00A Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities.

1.00B2b(1) Ineffective ambulation is defined generally as having insufficient lower extremity function to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general definition because the individual has the use of only one upper extremity due to amputation of a hand.) *Id.* To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living.

1.00B2b(2) They must have the ability to travel without companion assistance to and from a place of employment or school. . . . *Id.* When an individual's impairment involves a lower

extremity uses a hand-held assistive device, such as a cane, crutch or walker, the medical basis for use of the device should be documented. 1.00J4 The requirement to use a hand-held assistive device may also impact an individual's functional capacity by virtue of the fact that one or both upper extremities are not available for such activities as lifting, carrying, pushing, and pulling. *Id.*

Categories of Musculoskeletal include:

- 1.02 Major dysfunction of a joint(s) due to any cause: Characterized by gross anatomical deformity (e.g. subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:
- A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively as defined in 1.00B2b; or
 - B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, wrist, hand), resulting in inability to perform fine and gross movements effectively a defined in 1.00B2c

* * *

- 1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, and vertebral fracture), resulting in compromise of a nerve root (including the cauda equine) or spinal cord. With:
- A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine); or
 - B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours; or

- C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b. (see above definition)

In order to meet a musculoskeletal listing, the impairment must present a major dysfunction resulting in the inability to ambulate effectively. The Claimant testified to occasionally using a cane for ambulation however this need is not medically documented. The medical records establish degenerative changes of the lumbar spine as well as “bond-on-bone deformities of the patella. Ultimately, it is found that the Claimant’s impairments may meet a listed impairment within 1.00 however, the record is insufficient to meet the intent and severity requirement as there was no evidence that the Claimant was unable to ambulate effectively thus the Claimant cannot be found disabled under this listing.

The Claimant asserts physical disabling impairment due, in part, to hypertension. Listing 4.00 Listing 4.00 defines cardiovascular impairment in part, as follows:

. . . any disorder that affects the proper functioning of the heart or the circulatory system (that is, arteries, veins, capillaries, and the lymphatic drainage). The disorder can be congenital or acquired. Cardiovascular impairment results from one or more of four consequences of heart disease:

- (i) Chronic heart failure or ventricular dysfunction.
- (ii) Discomfort or pain due to myocardial ischemia, with or without necrosis of heart muscle.
- (iii) Syncope, or near syncope, due to inadequate cerebral perfusion from any cardiac cause, such as obstruction of flow or disturbance in rhythm or conduction resulting in inadequate cardiac output.
- (iv) Central cyanosis due to right-to-left shunt, reduced oxygen concentration in the arterial blood, or pulmonary vascular disease.

An uncontrolled impairment means one that does not adequately respond to the standard prescribed medical treatment. 4.00A3f In a situation where an individual has not received

ongoing treatment or have an ongoing relationship with the medical community despite the existence of a severe impairment, the disability evaluation is based on the current objective medical evidence. 4.00B3a If an individual does not receive treatment, an impairment that meets the criteria of a listing cannot be established. *Id.* Hypertension (high blood pressure) generally causes disability through its effect on other body systems and is evaluated by reference to specific body system(s) affected (heart, brain, kidneys, or eyes). 4.00H1 Hypertension, to include malignant hypertension, is not a listed impairment under 4.00 thus the effect on the Claimant's other body systems were evaluated by reference to specific body parts.

In the case presented, the record is devoid of any objective medical findings of any end organ damage as a result of the Claimant's hypertension. Accordingly, the Claimant cannot be found disabled within Listing 4.00.

The Claimant asserts physical disabling impairments due to colitis. Listing 5.00 defines digestive system impairments. Disorders of the digestive system include gastrointestinal hemorrhage, hepatic (liver) dysfunction, inflammatory bowel disease, short bowel syndrome, and malnutrition. 5.00A Medical documentation necessary to meet the listing must record the severity and duration of the impairment. 5.00B The severity and duration of the impairment is considered within the context of the prescribed treatment. 5.00C1 Inflammatory bowel disease ("IBD") includes Crohn's disease and ulcerative colitis. 5.00E1 IBD is documented by endoscopy, biopsy, and other appropriate medically acceptable imaging or operative findings. 5.06A, B Surgical diversion of the intestinal tract, including ileostomy and colostomy, does not preclude any gainful activity if an individual is able to maintain adequate nutrition and function of the stoma. 5.00E4 If adequate nutrition is not maintained, weight loss due to any digestive disorder despite continuing treatment is considered. *Id.*, 5.08 Weight loss with BMI of less than

17.5 calculated on at least two evaluations at least 60 days apart within a consecutive 6-month period satisfies Listing 5.08.

Listing 5.06 discusses inflammatory bowel disease (“IBD”). In order to meet this listing, the IBD must be documented by endoscopy, biopsy, or other appropriate medically acceptable imaging or operative finding, with:

- A. Obstruction of stenotic areas (not adhesions) in the small intestine or colon with proximal dilatation, confirmed by appropriate medically acceptable imaging or in surgery, requiring hospitalization for intestinal decompression or for surgery, and occurring on at least two occasions at least 60 days apart within a consecutive 6-month period.

OR

- B. Two of the following despite continuing treatment as prescribed and occurring within the same consecutive 6-month period:
 - 1. Anemia with hemoglobin of less than 10.0 g/dL, present on at least two evaluations at least 60 days apart; or
 - 2. Serum albumin of 3.0 g/dL or less, present on at least two evaluations at least 60 days apart; or
 - 3. Clinically documented tender abdominal mass palpable on physical examination with abdominal pain or cramping that is not completely controlled by prescribed narcotic medication, present on at least two evaluations at least 60 days apart; or
 - 4. Perineal disease with a draining abscess or fistula, with pain that is not completely controlled by prescribed narcotic medication, present on at least two evaluations at least 60 days apart; or
 - 5. Involuntary weight loss of at least 10 percent from baseline, as computed in pounds, kilograms, or BMI, present on at least two evaluations at least 60 days apart; or
 - 6. Need for supplemental daily enteral nutrition via a gastrostomy or daily parenteral nutrition via a central venous catheter.

In this case, the Claimant's continued diarrhea problem is documented as well as the need for a GI evaluation. The December biopsy findings were suggestive of IBD, however the objective medical records are insufficient to meet the intent and severity requirement of a listed impairment within 5.00, namely 5.06 and/or 5.08 (weight loss due to digestive disorder).

The Claimant asserts physical disabling impairments due to renal mass and stones. Listing 6.00 discusses genitourinary impairments that result from chronic renal disease. Renal dysfunction due to any chronic renal disease due to any chronic renal disease, such as chronic glomerulonephritis, hypertensive renal vascular disease, diabetic nephropathy, chronic obstructive uropathy, and hereditary nephropathies is evaluated under Listing 6.02. Medical records of treatment, response to treatment, hospitalizations, and laboratory evidence of renal disease that documents the progressive nature of the disease are necessary to meet this listing.

6.00C(1) The type, response, side effects, and duration of therapy is considered as well as any effects of post-therapeutic residuals. 6.00D An impairment of renal function due to any chronic renal disease that has lasted or is expected to last continuously for a period of at least 12 months with chronic hemodialysis or peritoneal dialysis or kidney transplantation meets Listing 6.02. In addition, impairment of renal function is also met when the record documents persistent elevation of serum creatinine with renal osteodystrophy manifested by severe bone pain or persistent motor or sensory neuropathy or persistent fluid overload syndrome with diastolic hypertension greater than or equal to diastolic blood pressure of 110 mm Hg or persistent signs of vascular congestions despite prescribed treatment. Persistent anorexia with weight loss determined by the body mass index of less than 18 calculated at least two evaluations at least 30 days apart within a consecutive 6-month period may also establish an impairment of renal function.

In this case, medical records document tiny non-obstructing intrarenal calculi on kidneys. Ultimately, based on the submitted records, there was insufficient evidence presented to support a finding of disabled, or not disabled, under this listing.

The Claimant asserts physical disabling impairments due to cancer. Listing 13.00 discusses malignant neoplastic diseases. The medical records establish that the Claimant underwent a full hysterectomy due to uterine cancer however subsequently, and after treatment, there is no further evidence of cancer noted. The Claimant also had an abdominal mass removed without complication. The Claimant continues to have small nodules on her lung, breast, and kidneys but there is no evidence of metastases. Ultimately, the Claimant may meet a listing within 13.00 but the objective medical record is insufficient to support a finding of disabled, or not disabled, under this listing.

The Claimant asserts mental disabling impairments due to depression and anxiety. Listing 12.00 encompasses adult mental disorders. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A The existence of a medically determinable impairment(s) of the required duration must be established through medical evidence consisting of symptoms, signs, and laboratory findings, to include psychological test findings. 12.00B The evaluation of disability on the basis of a mental disorder requires sufficient evidence to (1) establish the presence of a medically determinable mental impairment(s), (2) assess the degree of functional limitation the impairment(s) imposes, and (3) project the probable duration of the impairment(s). 12.00D The evaluation of disability on the basis of mental disorders requires documentation of a medically

determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work consideration, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A The severity requirement is measured according to the functional limitations imposed by the medically determinable mental impairment. 12.00C Functional limitations are assessed in consideration of an individual's activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation. *Id.*

The objective medical records indicate the Claimant has depression and anxiety as a result of the multiple medical issues. There were no treatment records presented to support a listed impairment within 12.00, specifically, 12.04 and/or 12.06. Ultimately, based upon the submitted record, it is found that the Claimant's physical and mental impairments do not meet the intent and severity requirement of a listed impairment therefore 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 Claimant'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 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.

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 nonexertional. 20 CFR 416.969a(a) In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity 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 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 Claimant's prior work history includes employment as a caregiver and office/clerical worker. In light of the Claimant's testimony and in consideration of the Occupational Code, the Claimant's prior work is classified as unskilled, light/sedentary work.

The Claimant testified that she experiences difficulty lifting/carrying; can stand for limited periods of time; can walk short distances; and is unable to fully squat and/or bend. The medical documentation notes similar restrictions to include mental limitations relating to his memory and concentration. If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920 In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is not able to return to past relevant work providing, thus the fifth step in the sequential evaluation 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 hearing, the Claimant, a high school graduate, was 48 years old thus considered a younger individual for MA-P purposes. Disability is found disabled 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 the record presented, the total impact caused by the combination of medical problems suffered by the Claimant must be considered. In doing so, it is found that the combination of the Claimant's physical and mental impairments have a major effect on her ability to perform basic work activities. The Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a) due to the nature of the combined limitations. After review of the entire record, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5

The State Disability Assistance ("SDA") program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10 et seq. and Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Department policies are found in PAM, PEM, and PRM. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, the Claimant is found disabled for purposes of the Medical Assistance ("MA-P") program, therefore the Claimant's is found disabled for purposes of continued SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance program and the State Disability Assistance program.

It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the February 5, 2009 application to determine if all other non-medical criteria are met and inform the Claimant and her attorney of the determination.
3. The Department shall supplement the Claimant any lost benefits she was entitled to receive if otherwise eligible and qualified in accordance with department policy.
4. The Department shall review the Claimant's continued eligibility in August of 2010 in accordance with department policy.

/s/
Colleen M. Mamelka
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 08/05/09

Date Mailed: 08/06/09

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to the Circuit within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

CMM/jlg

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