

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER:

[REDACTED]

Reg. No.: 2010-36875
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: July 12, 2010
Oakland County DHS (04)

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 held in Pontiac, Michigan on Monday, July 12, 2010. The Claimant appeared, along with [REDACTED], and testified. The Claimant was represented by [REDACTED] of [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-P") benefit program?

FINDINGS OF FACT

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

1. The Claimant submitted a public assistance application seeking MA-P benefits on December 18, 2009.
2. On March 17, 2010, the Medical Review Team ("MRT") determined the Claimant was not disabled finding the Claimant's impairment(s) lacked duration of 12 months or longer. (Exhibit 1, pp. 1, 2)
3. The Department notified the Claimant that she was found not disabled for MA-P purposes.

4. On May 10, 2010, the Department received the Claimant's timely written request for hearing. (Exhibit 2)
5. On June 8, 2010, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 5)
6. The Claimant's alleged physical disabling impairments are due to coronary artery disease post bypass surgery, diabetes mellitus, and hypertension.
7. The Claimant has not alleged any mental disabling impairment(s).
8. At the time of hearing, the Claimant was 63 years old with a [REDACTED] birth date; was 5' 1" in height; and weighed 125 pounds.
9. The Claimant graduated from high school in Thailand and has a work history of as a restaurant owner.
10. The Claimant's impairment(s) has lasted, or is expected to last, continuously for a period of at least 12 months.

CONCLUSIONS OF LAW

As a preliminary matter, the Social Security Administration ("SSA") found the Claimant not disabled but awarded Retirement, Survivor's, Disability Insurance ("RSDI") income based on age. SSA determinations regarding SSI are binding on the State (based on the section 1634 agreement between the Commissioner of Social Security and the State) pursuant to 42 CFR 435.541(b). Conversely, SSA determinations regarding RSDI are not binding on the State (See 20 CFR 404.955) thus the issue of disability is properly before the undersigned.

The Medical Assistance ("MA") program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations ("CFR"). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Bridges Reference Manual ("BRM").

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a) The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory

findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (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)

As outlined above, the first step looks at the individual's current work activity. 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 disability due to coronary artery disease post bypass surgery, diabetes mellitus, and hypertension.

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On [REDACTED], the Claimant was admitted to the hospital with complaints of left side chest pain. A coronary bypass surgery x4 was performed without complication. The Claimant was discharged on [REDACTED].

On [REDACTED], the Claimant presented to the emergency room with complaints of hypoglycemia. The Claimant was found to be stable from a cardiac standpoint and was discharged on or about [REDACTED] with the diagnoses of coronary artery disease, hypertension, diabetes mellitus, dyslipidemia, and possible pleural effusion.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were coronary artery disease, hypertension, diabetes type II, and dyslipidemia. The physical examination revealed right side chest pain and right side rib pain, both attributable to her open heart surgery. The Claimant was found able to frequently lift/carry 10 pounds and able to perform repetitive actions with her extremities.

On [REDACTED], a consultative examination was performed. The Claimant was diagnosed with coronary artery disease status post surgery, high blood pressure, diabetes mellitus, hyperlipidemia, anemia, and right side chest wall pain. The Claimant was doing well but required ongoing treatment and medication.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were right side chest pain status post surgical intervention, hypertension, and diabetes mellitus. The Claimant was in stable condition but limited to occasionally lift/carry less than 10 pounds, stand and/or walk less than 2 hours in an 8 hour workday; and able to perform simple grasping and reaching with both upper extremities.

On [REDACTED], a Medical Examination Report was completed by the Cardiologist on behalf of the Claimant. The current diagnoses were mild cognitive defect, coronary artery disease, diabetes mellitus, and mild cognitive disorder. The physical examination noted the Claimant's recent [REDACTED] coronary bypass surgery and mild cognitive defects. The Claimant was limited to occasionally lift/carry 10 pounds; stand and/or walk at least 2 hours during an 8-hour workday; sit less than 6 hours during this same time period; and able to perform simple grasping and reaching with both upper extremities. The Claimant was unable to operate foot/leg controls. Mentally, the Claimant's comprehension was limited.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were coronary artery disease, diabetes mellitus, hypertension, and dyslipidemia. The physical examination revealed weakness in the left lower extremity with tenderness of the left calf upon palpation. The Claimant was restricted to frequently lifting/carrying less than 10 pounds; standing and/or walking less

than 2 hours during an 8-hour workday; and able to perform fine manipulation with both upper extremities.

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 medical evidence establishing that she does have some physical and mental impairment that effect 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 impairment(s) due to coronary artery disease post bypass surgery, diabetes mellitus, and hypertension.

Listing 1.00 (musculoskeletal system), Listing 4.00 (cardiovascular system), and Listing 9.00 (endocrine system) were considered in light of the objective medical evidence. Ultimately, it is found that the evidence does not support a finding of disabled, or not disabled, based on the intent and severity requirements of a listing thus the Claimant's eligibility at Step 4 is necessary. 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 self employment as a restaurant owner whose primary duties included food preparation, cooking, waitressing, supervising, and

light bookkeeping. In light of the Claimant's testimony and in consideration of the Occupational Code, the Claimant's prior work history is classified as semi-skilled, light work.

The Claimant testified that she can lift/carry approximately 10 pounds; can stand for 15 minutes; can sit for about ½ hour; can bend and squat; and can perform repetitive actions with her upper extremities. The objective medical evidence notes the Claimant's condition as stable with lifting/carrying limited to about 10 pounds; standing and/or walking less than 2 hours in an 8 hour workday; and able to perform simple grasping and reach. 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 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 (Thailand), was 63 years old thus considered to be of advanced age for MA-P purposes. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

In the record presented, it is found that the Claimant maintains the physical and mental capabilities necessary to perform the full range of activities necessary for sedentary work as defined in 20 CFR 416.967(a) After review of the entire record and in consideration of the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II], specifically Rule 201.06, it is found that Claimant is disabled for purposes of the MA-P program at Step 5.

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.

It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the December 18, 2009 application to determine if all other non-medical criteria are met and inform the Claimant and her authorized representative of the determination.
3. The Department shall supplement for any lost benefit the Claimant 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 accordance with department policy in August 2011.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 8/02/2010

Date Mailed: 8/02/2010

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 Circuit Court within 30 days of the mailing 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.

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cc:

