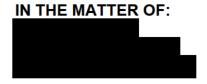
STATE OF MICHIGAN

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



Reg. No.: 2011-13455

Issue No.: 2009

Case No.:

Hearing Date: April 14, 2011 Macomb County DHS (20)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administ rative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a hearing was held in Warren, Michigan on Thursday, April 14, 2011. The Claimant appeared and testified. The Claimant was represented by appeared on behalf of the Department of Human Services ("Department").

During the hearing, the Claimant waived the time period for the issuance of this decision, in order to allow for the submi ssion of additional medical evidence. No records were received. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department proper ly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") benefit program?

FINDINGS OF FACT

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

- 1. The Claimant submitted applications for public assistance seeking MA-P benefits on April 2nd, May 5th, and June 30, 2010. (Exhibit 1, pp. 23 54)
- 2. On June 2nd and September 13, 2010, the Medical Review Team ("MRT") fo und the Claimant not disabled. (Exhibit 1, pp. 67, 69)

- 3. On September 22, 2010, the Department notified the Claimant of the MRT determination. (Exhibit 1, p. 63)
- 4. On December 10, 2010, the Department received the Claimant's timely written request for hearing. (Exhibit 3)
- 5. On February 1, 2011, the State H earing Review T eam ("SHRT") found the Claimant not disabled. (Exhibit 4)
- 6. The Claimant alleged physical disabling impairments due to shortness of breath, high blood pressure, abdominal pain, dia rrhea, pancreatitis, dizziness, and sleep apnea.
- 7. The Claim ant alleged mental disabling impairments due to anxiety and depression.
- 8. At the time of hearing, the Claimant was birth date; was 5'5" in height; and weighed 190 pounds.
- 9. The Claimant is a high school graduate with some college with an employment history in data entry and as a care provider.

CONCLUSIONS OF LAW

The Medical Assistance 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, formerly known as the Family Independenc e Agency, pursuant to MCL 400.10 *et seq.* and MCL 400.105. Department policies are found in the Bridge's Administrative Manual ("BAM"), the Bridges Elig ibility Manual ("BEM"), and the Bridges Reference Tables ("RFT").

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental im pairment which can be expected to result in death or which has lasted or can be expect ed 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/prescri bed treatment, prognosis for recovery and/or medical assessment of ability to do work-related ac tivities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CF R 416.908; 2 0 CFR 4 16.929(a). Similarly, conclusor y

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 cons ider an individual's current work activit y; 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 det ermine whether an individual can perform past relev ant work; and residual functional capacity along with vocational factors (i .e. age, education, and work experienc e) 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 disable ed, or not disabled, at 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 indi vidual'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 f unctional capacity is the most an indiv idual can do d espite the limitations based on all relevant evidence. 20 CF R 945(a)(1). An individual's residua I functional capacity assessment is evaluat ed at both steps four and five. 20 CF 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if f ound 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 i ndividual has the responsibility to prove disability. 20 CFR 4 16.912(a). An impair ment or combi nation of impairments is not severe if it does not signific antly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The in dividual 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. 2 0 CF R 41 6.920a(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 whic h the impairment(s) interferes with an tion independently, appropriately , effectively, and on individual's ability to func Id.; 20 CFR 416.920a(c)(2). Chronic m ental disorders, structured and the effect on the overall degree of settings, medication, and other treatment functionality is considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social f unctioning; concentration, persistence or pace; and episodes of decompensat ion) are consider ed when deter mining an indiv idual'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 repr esents a degree of limitation t hat 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 is made. 20 CF R 416.920a(d)(2). If the severe mental im pairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CF R 416.920a(d)(3).

As outlined above, the first step looks at the i ndividual's current work activity. In the record presented, the Cla imant is not involved in substantial gainful activity therefore is not ineligible for disability benefits under Step 1.

The severity of the Claimant 's alleged impairment(s) is c onsidered 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 seevere. 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:

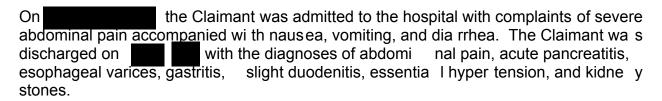
1. Physical functions such as walk ing, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

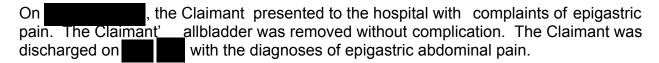
- 2. Capacities for seeing, hearing, and speaking;
- Understanding, carrying out, and remembering simple instructions;
- 4. Use of judgment;
- 5. Responding appropriately to supervision, co-workers and usual work situations; and
- 6. Dealing with changes in a routine work setting.

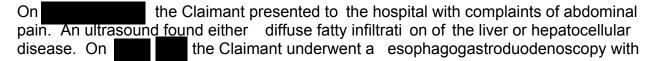
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The second step allows for dismissal of a disability claim obviously lacking in medical merit. Higgs v Bowen, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an admin istrative convenience to screen out claims that 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 Cla imant alleges di sability due to shortness of breath, high blood pressure, abdominal pain, diarrhea, pancreatitis, dizziness, sleep apnea, depression, and anxiety. In support of her claim some older records from submitted which doc ument treat ment/diagnoses of h ypertension, abdominal pain, and acid reflux.







biopsy which confirmed gastritis but was otherwise unremarkable. The Claimant was discharged on or about

On the Claiman t attended a consultative evaluation. The diagnosis was depression (not otherwise specified) with a Global Assessment Functioning ("GAF") of 48. The prognosis was fair and she was found mentally capable of performing simple jobs.

As previously noted, the Claim ant 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 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 minimus* effect on the Claimant's basic work activities. Further, the impairments have lasted continuous ly for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the seque ntial an alysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or co mbination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged physic al disabling impairments due to shor tness of breath, high blo od pressure, abdominal pain, diarrhea, pancreatitis, dizziness, sleep apnea, depression, and anxiety.

Listing 1.00 (musculoskeletal system), Listing 3.00 (respiratory system), Listing 4.00 (cardiovascular system), Listing 5.00 (diges—tive system), Listing 6.00 (genitourinary system), Listing—11.00 (neurologic), and Listing 12.00 (m—ental disorders) were considered in light of the objective medical evidence. Based on these records, it is found that the Claimant's impair ments do not meet the intent and severity requirement of a listed impairment. Accordingly, the Claimant cannot be found disabled, or not disabled, at Step 3; therefore, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a dis ability claim requires an assessment of the Claimant's residual f unctional capacity ("RFC") and past relevant em ployment. 20 CF R 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 lear n the position. 20 CF R 416.960(b)(1). Vocational fact ors of age, education, and work experience, and whet her the past relevant employment exists in significant numbers in the natio nal economy is not consider ed. 20 CF R 416.960(b)(3). RFC is as sessed 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 c lassified as sedentary, light, medium, heavy, and very heavy. 2 0 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 r equired occasionally and other sedentary lifting no more than 20 pounds at a time with criteria are met. Light work involves 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 invo Ives sit ting 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. A n individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fin 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 object is weighing up to 50 pounds. 20 CFR 416.967(d). A n individual capable of heavy work is also c apable 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 standing, walk ing, lifting, equirements, i.e. sitting, strength demands (exertional r carrying, pushing, or pulling) are consider ed nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparis on of the individual's residual functional c apacity with the demands of past relevant work. an individual can no longer do past relevant work the same residual functional capacity assessment along with an individual's a ge, 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 tole rating some physical f eature(s) of certain work settings (i.e. can't tolera te 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-e xertional aspects of

work-related activities, the rules in Appendi \times 2 do n ot direct factual conclusions o f disabled or not disabled. 20 CFR 416. 969a(c)(2). The determination of whether disability e xists is b ased upon the princi ples in the appropriate sections of the regulations, giving consideration to the rules fo r specific case situat ions in Appendix 2. *Id.*

The Claimant's work history in cludes work in data entry and as a care provider. In light of the Claimant's testimony and in consi deration of the Occupationa I Code, the Claimant's prior work in data e ntry is cla ssified as semi-skille d, sedentary while the employment as a care provider is considered unskilled light to medium work.

The Claim ant testified that she can li ft/carry less than 5 pounds; walk for short distances; stand about 10 minutes; sit for 15 mi nutes hours; and has difficulty bending and/or squatting. The Claimant does not have problems with gripping and grasping. The objective medical evidence does not contain any restrict ions with the exception of the 4 week period following the removal of her gallbladder. If the impairment or combination of impairments does not limit an individual's physical or mental ability to do basic work activities, it is not a s evere impairment(s) and disability does not exist. 20 CFR 416.920. In consideration of the Claimant's testimony and medical records, it is found that the Claimant is able to ret urn to past relevant work in data entry. Accordingly, the Claimant is found not di sabled at Step 4 wit h no further analys is required.

Assuming arguendo, that Step 5 was requires; in Step 5, an assessment of the individual's residual functional capacity an dage, education, and work experience i considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, the Claim ant was 46 year s old, thus considered to be a younger individual for MA-P purposes. The Claimant has a high school education with some college and vocational training. 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 residu al capacity to substantial gainfu I 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 subs tantial evidence that the individual has the ic jobs is needed to vocational qualifications to perform specif 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). The age for younger individuals (under 50) generally will not serious ly affect the ability to adjust to other work. 20 CF R 416.963(c).

In this case, the evidence established that the Claimant suffers from abdominal pain (post gallbladder removal surgery), gastritis, and depression. Alt hough the record was extended for additional medical evidence to support the Claimant's claim of disability, no further records were received. The objec tive medical evidence does not c ontain any restrictions. The Claimant is able to perform activities of daily living. There was no evidence of marked limitations regarding s ocial functioning or in his ability to get along with co-workers or peers without distracting them or exhi biting behavioral extremes. The Claim ant was not significa ntly limited in the other three areas and as such, the mild. In the area of concent degree of limitation is ration, persistence, o r pace, the Claimant was no evidence of marked limitations. The degree of limitation is moderate, at most. And finally, there was no evidence of repeated epis odes of decompensation. Applying the four point scale, the Claimant's degree of limitation in the fourth functional area is a 1. In light of the foregoing, it is found that the Claimant maintains the residual functional capacity for work activities on a regular and continuing basis to meet the physical and mental dem ands required to perform at least light work as defined in 20 CFR 416.967(b). After review of the entir e record, fi nding no contradiction with the Claimant's non-exertional limitations, and using the Medi cal-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically 201.22, the Claimant would be found not disabled for purposes of the MA-P program at Step 5 as well.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant not disabled for purposes of the MA-P benefit program.

Accordingly, it is ORDERED:

The Department's determination is AFFIRMED

Colleen M. Mamuka

Colleen M. Mamelka

Administrative Law Judge

For Maura Corrigan, Director

Department of Human Services

Date Signed: September 29, 2011

Date Mailed: September 29, 2011

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party wit hin 30 days of the ma illing date of this Decision and Order. Administrative Hear ings will not orde r a rehearing or reconsideration on the Department's mo tion where the final decis ion 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 ti mely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing <u>MAY</u> be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at

Michigan Administrative hearings

Re consideration/Rehearing Request

P. O. Box 30639

Lansing, Michigan 48909-07322

CMM/cl

