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



 Reg. No.:
 2011-33453

 Issue No.:
 2009, 4031

 Case No.:
 Hearing Date:

 Hearing Date:
 August 15, 2011

 Macomb County DHS (36)
 August 15, 2011

ADMINISTRATIVE LAW JUDGE: Colleen 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 Monday, Augus t 15, 2011. The Claimant appeared, along with appeared, and test ified. appeared on behalf of the Department of Human Service s ("Department").

<u>ISSUE</u>

Whether the Department proper ly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") and St ate Disability Assistance ("SDA") benefit programs?

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 Claim ant entered t he United States in Assistance coverage under the Refugee Assistance Program ("RAP").
- 2. In February 2011, the Claimant's Medical Assistance coverage terminated.
- 3. The Claimant submitted an application for public assistance seeking MA-P and SDA benefits on February 24, 2011.
- 4. On March 31, 2011, the Medical Revi ew Team ("MRT") found the Claimant not disabled. (Exhibit 1. pp. 46, 47)

- 5. The Department notified the Claimant of the MRT determination on April 5, 2011.
- 6. On April 25, 2011, the Department re ceived the Claimant's written request for hearing. (Exhibit 2)
- 7. On June 3, 2011, the St ate Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 3)
- 8. The Claimant alleged physical disabling impairments due to bac k pain, ast hma, shortness of breath, sleep apnea, and headaches.
- 9. The Claim ant alleged mental di sabling impairments due to anxiety and depression.
- 10. At the time of hearing, the Claimant was years old with a birth date; was 5'1" in height' and weighed 130 pounds.
- 11. The Claimant has a limit ed education with an employm ent history as an adult care provider which included cooking/cleaning and a child care provider.

CONCLUSIONS OF LAW

As a preliminary matter, the Claimant prev iously received MA coverage under the RAP program. The RAP is a federal program which helps refugees to become self-sufficient after their arrival in the United States. BEM 630. T he RAP has two c omponents; Refugee Assistance Program Cash ("RAPC") and Refugee Assistance Program Medical ("RAPM"). BEM 630. RAPC a nd/or RAPM is available on ly during the eight months immediately following the refugee's date of entry into the U.S or date asylum is granted. BEM 630. Here, in F ebruary, the Claimant's RAPM benefit s terminated - eight months after her entry into the United States. In the event that the Claim ant is protesting the termination of RAPM, the Department's actions are AFFIRMED.

The Medical Assistance ("MA") program is est ablished 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"), formerly known as the Family Independenc e Agency, pursuant to MCL 400.10 *et seq.* and MCL 400.105. Department polic ies are found in t he Bridges Administrative Manual ("BAM"), the Bridge s Eligibility 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 claimi ng a physical or mental disability has the burden to esta blish it through the use of competent medical evidenc e from qualified medical sources such as his or her medical histor y, clinical/laboratory findings, diagnosis/prescri bed treatment, prognosis for recovery and/or medical assessment of ability to do work-related ac tivities o r ability to reason and make appropriate mental adjustments, if a mental disab ility is alleged. 20 CRF 413 .913. An individual's subjective pain com plaints ar e not, in and of themselves, sufficient to establish disab ility. 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, t he federal regulations require several factors to be considered including: (1) the location/du ration/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 determi ne the ext ent of his or her functi onal 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 fivestep 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 c an 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 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 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 despite the limitations based on all relevant evidence. 20 CF R 945(a)(1). An individual's residua l functional capacity assessment is evaluat ed at both steps four and five. 20 CF R 416.920(a)(4). In determining disability, an i ndividual's functional capacity to perform basic work activities is evaluated and if found that the individ ual h as 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 indi vidual has the responsibility to prove

disability. 20 CFR 4 16.912(a). An impair ment or combinat ion of impairments is n ot severe if it does not signific antly limit an i ndividual's physical or m ental ability to do basic work activities. 20 CFR 416.921(a). The in dividual has the resp onsibility t o 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 m ental impairments, a s pecial technique is utilized. 2 0 CF R 41 6.920a(a). First, an i ndividual's pertinent sym ptoms, signs, a nd 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 individual's ability to func tion independently, appropriately, effectively, and on а Id.; 20 CFR 416.920a(c)(2). Chronic m ental disorders, structured sustained basis. the effect on the overall degree of settings, medication, and other treatment and functionality is considered. 20 CFR 416.920a(c)(1). In addi tion, 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 lim itation 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 lis ted mental disorder is made. 20 CF R 416.920a(d)(2). If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual function on al 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 Claimant is not involved in substantial gainful activity; therefore, is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impa irment(s) is considered under St ep 2. The Claimant bears the burden to pr esent sufficient objective medical evidenc e t o substantiate the alleged disa bling impairments. In order to be considered disabled for MA purpos es, the impairment must be se vere. 20 CFR 916. 920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it signific antly

limits an in dividual'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;
- 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.
- ld.

The second step allows for dismissal of a di sability claim obviously lacking in medical merit. *Higgs v Bowe n*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an admin istrative convenience to screen o ut 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 qu alifies 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 di sability due to back pain, asthma, shortness of breath, sleep apnea, headaches, depression, and anxiety.

In **Example**, pulmonary function tests ("PFT") revealed a forced expiratory volume in one second ("FEV₁") of 1.70 and 2.53 and the forced volume capacity ("FVC") of 2.41 and 3.11 resulting in a finding of mild obstruction.

On chest x-rays found no evidence of active disease.

On **the second s**

A CT of the head/brain was performed on this same date which found no shift of midline structures, mass effect, infarct, or pathologic enhancement.

On a MRI of the hip fo und minimal insertional gluteus medius and minimus t endinosis at the bi lateral greater trochanters wit hout tear or trochanteric bursitis.

On this same date, an MRI of the lum bar spine showed non-compressive mild annular disc bulging and fac et arthropathy of the lumbar spine without central canal or significant foraminal compromise.

On **evaluation** the Claimant attended an appointment at a pulmonary clinic for an evaluation of her shortness of breath and asthma. The diagnoses were moderate-tosevere as thma, environmental allergies, al lergic rhinitis, a nd chron ic sinus itis. Obstructive sleep apnea was not ruled out.

On a chest x-ray found no active lung disease.

On a psychiatric evaluation was performed. The Claimant's insight and judgment were poor. The diagnos is was post-traumatic stre ss disorder with a Global Assessment Functioning ("GAF") of 50 to 55.

On **example a** an x-ray of the right foot showed a facture at the base of the fifth metatarsal. The Claimant was provided a CAM boot and instructed bear weig ht as tolerated.

On the Claimant presented to the emergency room with complaints of dizziness, falling, fracture, headache, abdomi nal pain, nausea, and rectal bleeding. A CT of the brain revealed s inusitis (post surgery) without evidence of acute hemorrhage or mass effect. Abdominal x-rays found non-obstructive non-dilated bowel gas pattern without acute intrathoracic process. The Claimant was treated and discharged with the diagnosis of chronic headache.

On **the Claimant attended an orthopedic follow-up for her right fifth** metatarsal tuberosity fracture. The physical examination revealed moderate tenderness to palpitation over the base of the fifth me tatarsal without significant pain. X-rays showed the fracture line wa s evident but not displac ed and without significant angulation. The Claimant was to continue to wear her CAM boot and bear weight as tolerated.

On **Constant and the Claimant atten** ded a follow-up appoint ment status post surgery to correct the shape of the septum of the nose. The Claimant was healing well.

On the Claimant's primary care physician wrote a letter stating that the Claimant has a 10+ y ear history of severe persistent bronchial asthma requiring 12 to 16 courses of steroid treatment over the last 18 month per iod. The letter continued stating that the Claimant experiences fair ly dramatic improvement in her d aily asthma symptoms as a result of Xola ir injections. The recommendations were to continue with therapy and the injections.

On a letter confirmed that the Claimant receives psychotherapy and medication management for treatment of her post-traumatic stress disorder.

As previously noted, the Claim ant bears t he burden to present sufficient objective medical evidence to s ubstantiate the alleged disabling im pairment(s). As summarized above, the Claimant has presen ted medical evidence establis hing that she does hav e 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 la sted 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 disabling impairments due to back pain, asthma, shor tness of breath, sl eep apnea, headaches, depression, and anxiety.

Listing 1.00 (musculoskeletal system), List ing 3.00 (respiratory system), Li sting 11.00 (neurologic), and Listing 12.00 (mental disor ders) were considered in light of the objective medical ev idence. Based on these records, it is found that the Cla imant's impairments do not meet the in tent and severity requirement of a listed impairment. Accordingly, the Claimant can not be f ound disabled or not disable d 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 pas t relevant employment. 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 classified as sedentary, light, medium, hea vy, 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 j ob 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 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 we ight lifted may be very little, a job is i n 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 dex terity 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 w eighing up to 25 pounds. 20 CFR 416.967(c). An individua I capable of performing medium work is also capable of light and sedentary work. *Id.*

Heavy work involves lifting no m ore than 1 00 pounds at a time wit h frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An indiv idual capable of heavy work is also capable of medium, light, and sedentary work. Id.

Finally, very heavy work involv es 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 capab le 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, walk ing, lifting, 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. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment along with an individual's age, educat ion, 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; di fficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating so me physical feature(s) of certain work settings (i.e. cannot tolerate dust or fumes); or difficulty performing the manipulative or postur al functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 4 16.969a(c)(1)(i) - (vi). If the imp airment(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 CF R 416.969a(c)(2). The determination of whether disability exists is bas ed upon the principles in the appr opriate sections of the regulations, giving consideration to the rules for specific case situat ions in Appendix 2. Id

The Claimant's work history includes employment history as an adult and child c are provider which inc luded cleaning and cooking services. In light of the Claimant's testimony and in consideration of the Occupational Code, t he Claimant's prior work is classified as unskilled light work.

The Claimant testified that she can lift/car ry at least 10 pounds; walk approximately 1 mile; stand for short periods of time; sit for over 2 hours; and ex periences pain wh en bending and/or squatting. Current objective m edical evidence does not contain specific physical or mental limitations. 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 severe impairment(s) and disability does not ex ist. 20 CFR 416. 920. Ultimately, in consideration of the Claimant's testimony and medical re cords, it is found that the Claimant maintains the physica I and mental capacities to perform past rel evant work. Accordingly, the Claimant is found not disabled at Step 4 wit h no further analys is required.

The State Disability Assist ance program, which pr ovides financial assistance for disabled persons, was established by 2004 PA 344. The Depa rtment administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Depart ment policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purpose s if the person has a physical or mental impairment which m eets federal SSI dis ability standards for at least ninety days. Receipt of SSI or RSDI benefit s based on disability or blindness, or the receipt of MA benefits b ased on disability or blindness an in dividual as disabled for purposes of the SDA program.

In this cas e, the Claimant is found not di sabled for purposes of the MA-P program; therefore, the Claimant is found not disabled for purposes of SDA benefit program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Department established it acted in accordance with Department polic y when it terminated the Claimant's RAPM coverage. It is further found that the Claimant is not disabled for purposes of the MA-P and SDA benefit programs.

Accordingly, it is ORDERED:

The Department's determinations are AFFIRMED.

Collein M. Mamilka

Colleen Mamelka Administrative Law Judge For Maura Corrigan, Director Department of Human Services

Date Signed: August 16, 2011

Date Mailed: August 16, 2011

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at t he request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hear ings will not order 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 timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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