

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

IN THE MATTER OF:

[REDACTED]

Reg No.: 2011-39614
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: November 14, 2011
Macomb County DHS (20)

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 hearing was held in Warren, Michigan on Monday, November 14, 2011. The Claimant appeared, along with [REDACTED], and testified. [REDACTED] 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 submission of additional medical evidence. The records were received, reviewed, and forwarded to the State Hearing Review Team ("SHRT") for consideration. On May 7, 2011, this office received the SHRT determination which found the Claimant not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefit 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 MA-P and SDA benefits on April 1, 2011.

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2. On June 9, 2011, the Medical Review Team (“MRT”) found the Claimant not disabled. (Exhibit 2, pp. 1, 2)
3. On June 15, 2011, the Department notified the Claimant of the MRT determination. (Exhibit 4)
4. On June 20, 2011, the Department received the Claimant’s written request for hearing. (Exhibit 4)
5. On July 27, 2011 and May 2, 2012, the SHRT found the Claimant not disabled. (Exhibit 6)
6. The Claimant alleged physical disabling impairments due to joint swelling, low blood pressure, ulcerative colitis, Crohn’s disease, and acid reflux.
7. The Claimant alleged mental disabling impairments due to depression and anxiety.
8. At the time of hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth date; was 4’11” in height; and weighed 124 pounds.
9. The Claimant is a high school graduate with as a life skills teacher, grocery bagger, landscaper, housekeeper, and work in retail.

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 Independence Agency, pursuant to MCL 400.10 *et seq.* and MCL 400.105. Department policies are found in the Bridge Administrative Manual (“BAM”), the Bridges 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 impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 416.913. An individual’s 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 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(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 benefits 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 416.920(a)(4)(ii); 20 CFR 416.920(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 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(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 joint swelling, low blood pressure, ulcerative colitis, Crohn's disease, acid reflux, depression, and anxiety. In support of her claim, some older records from as early as [REDACTED] were submitted which

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document treatment for fatigue, depression, anemia, gastrointestinal bleed, GERD, chest pain, twin still births, and hypothyroid.

On [REDACTED] the Claimant presented to the hospital with complaints of abdominal pain, vomiting, diarrhea, fever, and nausea. The Claimant weighed 44 kilograms. The Claimant was treated and discharged with the diagnoses of diarrhea and hypokalemia (low potassium).

On [REDACTED] an esophagogastroduodenoscopy was performed which found esophagitis and mild gastritis in the stomach. The biopsy of the stomach confirmed chronic gastritis. The Claimant's hemoglobin was 10.0. Biopsy of the esophagus showed squamous mucosa with mild chronic inflammation.

On this same date, a colonoscopy was performed which revealed severe colitis. Biopsies confirmed active chronic colitis with focal mucosal ulceration consistent with ulcerative colitis.

Subsequent to the above procedures, the Claimant was admitted to the hospital with complaints of diarrhea, abdominal pain, and weight loss. The Claimant was treated and discharged in stable condition.

On [REDACTED] the Claimant attended follow-up appointments for her Crohn's colitis. On April 13, the Claimant had gained 20 pounds from her last visit with a weight of 111 pounds.

On [REDACTED] the Claimant attended a follow-up appointment. The Claimant weighed 104.5 pounds.

On or about [REDACTED] the Claimant's treating physician wrote a statement confirming treatment for irritable bowel syndrome, Crohn's disease, and ulcerative colitis.

On [REDACTED] the Claimant's treating physician wrote a letter confirming treatment for chronic constipation, diarrhea, diffuse joint aches, intermittent swollen joints, and recurrent depressive disorder.

On [REDACTED] a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were Crohn's disease and ulcerative colitis. The Claimant was in stable condition and able to meet her needs in the home.

On [REDACTED] a Medical Examination Report was completed on behalf of the Claimant. The diagnoses were Crohn's colitis and depression. The Claimant's

condition was deteriorating. The Claimant weighed 128 pounds. Mentally, the Claimant was limited in her ability for sustained concentration and social interaction.

On [REDACTED] a Mental Status and Evaluation of Intellectual Functioning were performed. The WAIS IV was administered. The Claimant's full scale IQ was 87. The Claimant's ability to understand, remember, and carry out simple instructions was not severely impaired; however, her ability to respond appropriately to others including co-workers and supervisors, and adapt to changes in a work setting was severely impacted. Also severely impacted was the Claimant's ability to perform work-related activities in a reliable, consistent, and persistent manner. The Psychologist opined that the Claimant was able to perform her basic activities of daily living and manage money. The diagnoses were major depression, chronic and severe, chronic panic disorder with features of post-traumatic pain disorder, chronic pain disorder, and stress exacerbating somatic symptoms. The Global Assessment Functioning ("GAF") was 50 and the prognosis was poor without intervention and guarded with intervention.

The Mental Residual Functional Capacity Assessment was completed wherein the Claimant was found markedly limited in 7 of the 20 factors and was moderately limited in 6 factors. The Claimant was not significantly limited in her ability to remember locations and work-like procedures; understand and remember one or two-step instructions; carry out simple, one of two-step instructions; sustain an ordinary routine without supervision; make simple work-related decisions; ask simple questions or request assistance; maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness; be aware of normal hazards and take appropriate precautions; and be able to travel in unfamiliar places or use public transportation.

On [REDACTED] a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were Crohn's disease and/or ulcerative colitis. The Claimant weighed 123 pounds. The Claimant's condition was stable with no physical and/or mental limitations.

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 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 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 al

disabling impairments due to joint swelling, low blood pressure, ulcerative colitis, Crohn's disease, acid reflux, depression, and anxiety.

Listing 1.00 (musculoskeletal system), Listing 4.00 (cardiovascular system), Listing 5.00 (digestive disorders) and Listing 12.00 (mental disorders) were considered in light of the objective medical evidence. There were no objective findings of major joint dysfunction or ongoing treatment for persistent, recurrent, and/or uncontrolled (while on prescribed treatment) cardiovascular impairment. Regarding the Claimant's digestive disorder; there was no evidence of obstruction nor was there a showing of anemia with hemoglobin of less than 10.0g/dL on at least two evaluations at least 60 days apart within the same consecutive 6 month period. The Claimant's weight in [REDACTED] was 91, 104.5, 111, 128, and 123 respectively. Accordingly, the Claimant's BMI for those weights was 18.5, 20.8, 22, 25.4, and 24.4 based on the Claimant's testified height of 4'11½". This does not establish involuntary weight loss resulting in a BMI of less than 17.5 or weight loss of at least 10 percent from baseline on at least two evaluations at least 60 days apart within six consecutive months. The evidence does not show and/or suggest an abdominal mass. Mentally, the records establish that the Claimant suffers with anxiety and depression; however, there were no findings of marked limitations with the Claimant's ability to initiate, sustain, or complete activities of daily living or with maintaining social functioning. The records do not show repeated episodes of decompensation, each of extended duration. Although the objective medical records establish physical and mental impairments, these records do not meet the intent and severity requirements of a listing, or its equivalent. 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).

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

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though weight lifted may be very little, a job is in this category when it requires a good

deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additional 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 to function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

In this case, the Claimant alleged disability based on joint swelling, low blood pressure, ulcerative colitis, Crohn's disease, acid reflux, depression, and anxiety. The Claimant testified that she is able to walk less than one mile; grip/grasp without significant issue; sit for extended periods; lift/carry 25 pounds; stand for less than 2 hours; and is able to bend and squat. The objective medical evidence does not contain any specific physical

restrictions. Mentally, the Claimant was not precluded from performing simple, unskilled activity. After review of the entire record and considering the Claimant's testimony, it is found that the Claimant maintains the residual functional capacity to perform at least unskilled, limited, light work as defined by 20 CFR 416.967(b). Limitations being the alternation between sitting and standing at will.

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).

The Claimant's prior employment consisted of being a life skills teacher, a grocery bagger, landscaper, housekeeper, and work in retail. In consideration of the Claimant's testimony and Occupational Code, the prior employment is classified as unskilled, light work. The objective evidence does not contain specific physical limitations. Mentally, the evidence shows that the Claimant is capable of simple, unskilled activity. 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 light of the entire record and the Claimant's RFC (see above), it is found that the Claimant is able to perform past relevant work. Accordingly, the Claimant is found not disabled at Step 4 with no further analysis required.

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. 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 benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

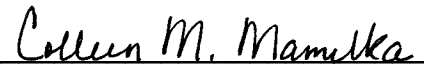
In this case, the Claimant is found not disabled for purposes of the MA-P program; therefore, she is found not disabled for purposes of SDA benefit program.

DECISION AND ORDER

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

Accordingly, it is ORDERED:

The Department's determination is AFFIRMED.



Colleen M. Mamelka

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

Date Signed: May 18, 2012

Date Mailed: May 18, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court 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.

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

- A rehearing **MAY** 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.

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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

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cc:

