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

IN THE MATTER OF:

[redacted]

Reg. No: 2011-44337
Issue No: 2009
Case No: [redacted]
Hearing Date:
November 15, 2011
Clinton County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. After due notice, an in-person hearing was held on November 15, 2011. Claimant, represented by [redacted] of [redacted], personally appeared and testified.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On March 26, 2012, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P) and Retro-MA)?

FINDINGS OF FACT

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

(1) On January 13, 2011, Claimant filed an application for MA and Retro-MA benefits alleging disability.

(2) On April 6, 2011, the Medical Review Team (MRT) denied Claimant's MA application indicating Claimant's non-exertional impairment does not prevent her from performing other work. (Department Exhibit A, pages 39-20).

(3) On April 14, 2011, the department caseworker sent Claimant notice that her application was denied.

(4) On July 8, 2011, Claimant filed a request for a hearing to contest the department's negative action.

(5) On August 30, 2011, the State Hearing Review Team (SHRT) again denied Claimant's application stating Claimant retains the residual functional capacity to perform a wide range of simple and repetitive work. (Exhibit B, pages 1-2).

(6) Claimant has a history of depression, borderline personality disorder, post traumatic stress disorder (PTSD), drug addiction, obsessive compulsive disorder (OCD), and memory loss.

(7) Claimant is a [redacted] woman whose birthday is [redacted]. Claimant is 5'5" tall and weighs 125 lbs. Claimant completed the ninth grade.

(8) Claimant was denied Social Security disability benefits and is appealing that determination.

CONCLUSIONS OF LAW

The Medical Assistance ("MA") program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, (DHS or department), 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 Reference Tables Manual ("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 CRF 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 (e.g., 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 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 individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 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 4 and 5. 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).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

In determining how a severe mental impairment affects the client's ability to work, four areas considered to be essential to work are looked at, (1) Activities of Daily Living, (2) Social Functioning, (3) Concentration, Persistence or Pace, and (4) Episodes of Decompensation.

Activities of daily living including adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephones and directories, using a post office, etc. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

Social functioning refers to an individual's capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2). Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. You may demonstrate impaired social functioning by, for example, a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving coworkers. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2). We do not define "marked" by a specific number of different behaviors in which social functioning is impaired, but by the nature and overall degree of interference with function. For example, if you are highly antagonistic, uncooperative or hostile but are tolerated by local storekeepers, we may nevertheless find that you have a marked limitation in social functioning because that behavior is not acceptable in other social contexts. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

Concentration, persistence or pace refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3). Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Wherever possible, however, a mental status examination or psychological test data should be supplemented by other available evidence. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Episodes of decompensation are exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning, as manifested by difficulties in performing activities of daily living, maintaining social relationships, or maintaining concentration, persistence, or pace. 20 CFR 404, Subpart P, App. 1, 12.00(C)(4). Episodes of decompensation may be demonstrated by an exacerbation in symptoms or signs that would ordinarily require increased treatment or a less stressful situation (or a combination of the two). Episodes of decompensation may be inferred from medical records showing significant alteration in medication; or documentation of the need for a more structured psychological support system (e.g., hospitalizations, placement in a halfway house, or a highly structured and directing household); or other relevant

information in the record about the existence, severity, and duration of the episode. 20 CFR 404, Subpart P, App. 1, 12.00(C)(4).

The evaluation of disability on the basis of a mental disorder requires sufficient evidence to: (1) establish the presence of a medically determinable mental impairment(s); (2) assess the degree of functional limitation the impairment(s) imposes; and (3) project the probable duration of the impairment(s). Medical evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent determination. In addition, we will consider information from other sources when we determine how the established impairment(s) affects your ability to function. We will consider all relevant evidence in your case record. 20 CFR 404, Subpart P, App. 1, 12.00(D).

When we rate the degree of limitation in the first three functional areas (activities of daily living; social functioning; and concentration, persistence, or pace), we will use the following five-point scale: none, slight, moderate, marked, and extreme. When we rate the degree of limitation in the fourth functional area (episodes of decompensation), we will use the following four-point scale: none, one or two, three, four or more. The last is incompatible with the ability to do any gainful activity. 20 CFR 416.920a(c).

After we rate the degree of functional limitation resulting from the impairment(s), we will determine the severity of your mental impairment(s). 20 CFR 416.920a(d). If we rate the degree of your limitation in the first three functional areas as “none” or “mild” and “none” in the fourth area, we will generally conclude that your impairment(s) is not severe, unless the evidence otherwise indicates that there is more than a minimal limitation in your ability to do any basic work activities. 20 CFR 416.920a(d)(1).

If your mental impairment(s) is severe, we will then determine if it meets or is equivalent in severity to a listed mental disorder. We do this by comparing the diagnostic medical findings about your impairment(s) and the rating of the degree of functional limitation to the criteria of the appropriate listed mental disorder. 20 CFR 416.920a(d)(2). If we find that you have a severe mental impairment(s) that neither meets nor is equivalent in severity to any listing, we will then assess your residual functional capacity. 20 CFR 416.920a(d)(3).

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling. If the remaining limitations would not be disabling, the substance abuse disorder is a contributing factor to the determination of disability. (20 CFR 404.1535 and 416.935). If so, the claimant is not disabled.

As outlined above, the first step looks at the individual’s current work activity. In the record presented, Claimant is not involved in substantial gainful activity and testified that

she has not worked since 2009. Therefore, she is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual 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, Claimant alleges disability due to depression, borderline personality disorder, post traumatic stress disorder (PTSD), drug addiction, obsessive compulsive disorder (OCD), and memory loss.

On October 5, 2010, Claimant underwent a psychological evaluation by the Michigan Disability Determination Service. Claimant currently was taking an antibiotic, Seroquel, Prozac, and Methadone. Claimant had been on 50 mg a day of Methadone for two years. Claimant's methadone dose had recently been lowered, but now it was going to

be increased again. Claimant had previous inpatient mental health treatment either overnight four separate times, or twice for two nights in a row, after trying to hurt herself. Her last inpatient mental health treatment was at age 19, four years ago. Claimant had no history of outpatient mental health treatment. Claimant had been attending outpatient substance abuse once or twice a week per week for two years. The psychologist concluded that Claimant's abilities to understand, remember, and carry out simple instructions seemed moderately impacted, especially in areas of attention and concentration and short term memory and dealing with material in a novel way. Claimant's ability to appropriately respond to others including supervisors and coworkers and adapt to changes in a work setting were viewed as severely impacted. Claimant's abilities to perform work related activities, despite alleged impairments, in a reliable, consistent, and persistent manner were severely impacted. Prognosis was guarded and the psychologist noted Claimant was not capable of managing her own funds. Diagnosis: Axis I: Major Depression Chronic Severe, PTSD, Learning Disorder, Panic Disorder without Agoraphobia infrequently, Cognitive Disorder, Opiate Dependence Heroin Injector now on Methadone, Cocaine Dependence alleged full remission two years, Cannabis Abuse alleged recent use one month ago, Nicotine Dependence one pack per day; Axis II: Borderline Personality Disorder; Axis III: Physical complaints: Concussions from assault with baseball bat to the head, Hepatitis C, Excessive Fatigue and sleeping, appears thin and sickly; Axis V: GAF 50. (Department Exhibit A, pp 49-56).

On December 7, 2010, Claimant went to the emergency room with possible ingestion of Advil with concern of Advil overdose. Claimant reported she blanked out and when she woke there was an empty bottle of Advil beside her that had been full earlier. She was concerned she may have ingested it. Claimant admitted using marijuana just before going to the emergency room and had recently used amphetamine, methamphetamine, and heroin in the past few days. There was no evidence of focal neurological deficits, elevated anion gap, acidosis or tinnitus. Urine function was normal. Claimant was given activated charcoal in the emergency room and treated with IV fluid hydration and discharged.

On January 3, 2011, Claimant completed her Activities of Daily Living form on which admitted she was a heroin addict and often had psychotic episodes.

On January 11, 2011, a discharge summary by the [redacted] indicated that Claimant's condition at admission to [redacted] in June 2009, was a 22 year old whose drug of choice was IV heroin, that she began using at the age of 16. Claimant also used marijuana, cocaine, and benzodiazepines sporadically. Claimant had a long treatment history with a consistent pattern of relapse after abstinence-based treatments and continued use of opiates while in outpatient methadone treatment. Claimant had 10 days of inpatient treatment at [redacted] when she was 16 years old. She followed this with 2-3 weeks of outpatient treatment. When Claimant was 18-19 years old, she was admitted to detox at [redacted] on 3 separate occasions, also IOP at Insight. Claimant was in the G-14 methadone program from December 2007 through May 2008 and was administratively discharged due to continued use and non-compliance. She

was readmitted to the G-14 program in February 2009, then transferred to [redacted] in June 2009. G-14 treatment reports indicated that Claimant had a history of good attendance and participation in therapy, but she did not stop using illegal drugs even when the threat of a taper was presented. Claimant has significant mental health issues and has been diagnosed in the past with Post Traumatic Stress Disorder, Depression, and Borderline and Antisocial Personality Disorder. Records indicate two suicide attempts and some cutting behaviors when she was a teenager. Claimant has inconsistently taken psychiatric medication for mental health issues. Claimant reported she wants to quit using heroin. The discharge from [redacted] also noted that Claimant continued to use heroin while in OMT. She recently concluded that methadone treatment was ineffective for her and caused excessive fatigue. However, due to her inability to pay for treatment prior to ABW funding, she had not been at a therapeutic methadone dose since July, 2010. She stopped taking methadone on 12/12/10 when she was incarcerated for one week. She then returned to using heroin to limit withdrawal symptoms, while arranging to enter inpatient treatment to detox off of all drugs.

On February 25, 2011, Claimant's former mental health and substance abuse therapist submitted a written letter indicating Claimant had been receiving outpatient methadone maintenance therapy for Opioid Dependence. She was on-site 6 days a week for methadone dosing and received one hour of individual counseling each week. Claimant's treatment began on 2/26/09 at [redacted], then her care was transferred to the Victory Clinic on 6/1/09, and Claimant left the program on 12/12/10. In addition to Opioid Dependence, Claimant met the criteria for borderline personality disorder. Claimant presented with a pervasive pattern of unstable and intense interpersonal relationships. She described impulsivity in multiple self-damaging areas that included substance abuse and spending. Claimant exhibited emotional instability characterized by intense depression and irritability. She reported episodes of inappropriate, intense anger with difficulty controlling her temper. Past records indicated two prior suicide attempts and cutting behaviors that occurred when she was a teenager. Claimant also met criteria for posttraumatic stress disorder and depressive disorder.

On August 4, 2011, a mental residual function capacity assessment was completed by Claimant's mental health and substance abuse therapist who reportedly completed the assessment from memory, based on her interactions with Claimant during the 6 days a week methadone dosing activities, and individual and group counseling Claimant participated in from 6/1/09 to 12/12/10. According to the assessment, Claimant is moderately to markedly limited in her ability to remember locations and work-like procedures, understand and remember one or two-step instructions, understand and remember detailed instructions, carry out simple, one of two-step instructions, carry out detailed instructions, maintain attention and concentration for extended periods, perform activities within a schedule, maintain regular attendance, and to be punctual within customary tolerances, sustain an ordinary routine without supervision, work in coordination with or proximity to others without being distract by them, make simple work-related decisions, complete a normal workday and worksheet without interruptions

from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods, interact appropriately with the general public, ask simple questions or request assistance, get along with co-workers or peers without distracting them or exhibiting behavioral extremes, maintain socially appropriate behavior and adhere to basic standards of neatness and cleanliness, be aware of normal hazards and take appropriate precautions, travel in unfamiliar places or use public transportation, and set realistic goals or make plans independently of others. These moderate to marked limitations are in the areas of Understanding and Memory, Sustained Concentration and Persistence, Social Interaction, and Adaptation. Claimant was considered to have no limitations in her ability to accept instructions and respond appropriately to criticism from supervisors, or in her ability to respond appropriately to change in the work setting. However, little weight was given to this assessment by the Administrative Law Judge because the assessment was not comprehensive. The assessment was from memory of interaction with Claimant from more than 8 months after her last contact with Claimant and did not include a narrative description of Claimant's current appearance, behavior and speech, thought processes, thought content, perceptual abnormalities, mood and affect, sensorium and cognition or judgment and insight.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Claimant has presented some limited medical evidence establishing that she does have some mental limitations on her ability to perform basic work activities. The medical evidence has established that Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, 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 individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Claimant has alleged mental disabling impairments due to depression, borderline personality disorder, post traumatic stress disorder (PTSD), drug addiction, obsessive compulsive disorder (OCD), and memory loss.

Listing 12.04 (mental disorder-affective disorders) was considered in light of the objective evidence. Affective disorders are characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation. The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

    1. Depressive syndrome characterized by at least four of the following:

        a. Anhedonia or pervasive loss of interest in almost all activities; or

b. Appetite disturbance with change in weight; or

c. Sleep disturbance; or

d. Psychomotor agitation or retardation; or

e. Decreased energy; or

f. Feelings of guilt or worthlessness; or

g. Difficulty concentrating or thinking; or

h. Thoughts of suicide; or

i. Hallucinations, delusions, or paranoid thinking; or

2. Manic syndrome characterized by at least three of the following:

a. Hyperactivity; or

b. Pressure of speech; or

c. Flight of ideas; or

d. Inflated self-esteem; or

e. Decreased need for sleep; or

f. Easy distractibility; or

g. Involvement in activities that have a high probability of painful consequences which are not recognized; or

h. Hallucinations, delusions or paranoid thinking; or

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration;

OR

C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or

2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or

3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Based on the foregoing, it is found that the Claimant's impairment does not meet the intent and severity requirement of a listed impairment; therefore, Claimant cannot be found disabled at Step 3. Accordingly, Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the individual'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 are 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 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, e.g., 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 to the demands of past relevant work must be made. *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 functioning 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 (e.g., 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.*

Claimant's prior work history consists of work as a home health aid and cashier. In light of Claimant's testimony, and in consideration of the Occupational Code, Claimant's prior work is classified as unskilled, light work.

Claimant testified that she is able to walk one to two miles, stand for 30 minutes, sit for hours and can lift/carry approximately 40-50 pounds. The objective medical evidence notes moderate to marked limitations in Understanding and Memory, Sustained Concentration and Persistence, Social Interaction, and Adaptability. 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 exist. 20 CFR 416.920. In consideration of the Claimant's testimony, medical records, and

current limitations, Claimant cannot be found able to return to past relevant work. Accordingly, Step 5 of the sequential analysis 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, Claimant was 24 years old and was, thus, considered to be a younger individual for MA-P purposes. Claimant completed the ninth grade. 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). The age for younger individuals (under 50) generally will not seriously affect the ability to adjust to other work. 20 CFR 416.963(c).

In this case, the evidence reveals that Claimant suffers from depression, borderline personality disorder, post traumatic stress disorder (PTSD), drug addiction, obsessive compulsive disorder (OCD), and memory loss. The objective medical evidence notes limitations in Understanding and Memory, Sustained Concentration and Persistence, Social Interaction, and Adaptability. In light of the foregoing, this Administrative Law Judge finds that the objective medical evidence on the record does establish that Claimant would be unable to perform any other work due to depression, borderline personality disorder, and post traumatic stress disorder (PTSD) which would result in a severely impaired ability to do work-related activities.

Claimant has presented the required competent, material and substantial evidence which would support a finding that Claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Therefore, Claimant is disabled for the purposes of the Medical Assistance disability (MA-P) program.

However, the Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

Claimant's testimony and the information indicate that Claimant has a history of tobacco, drug, and alcohol abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that Claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because her substance abuse is material to her alleged impairment and alleged disability.

The federal law does not permit a finding of disability for persons whose primary impairment is substance abuse. P.L. 104-121. In addition, a client must follow prescribed medical treatment in order to be eligible for disability benefits. If prescribed medical treatment is not followed, the client cannot meet the disability standard. 20 CFR 416.930. Claimant has failed to follow prescribed medical treatment, including substance abuse treatment, and continues to treat herself with illegal drugs instead of taking the methadone as prescribed.

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 programs.

Accordingly, it is ORDERED:

The Department's determination is AFFIRMED.

/s/_____
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 4/11/12

Date Mailed: 4/11/12

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.

VLA/ds