

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-44795
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 29, 2012
County: Van Buren

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 February 29, 2012. 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 June 5, 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 benefit programs?

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 February 10, 2011, Claimant filed an application for MA and Retro-MA benefits alleging disability.
- (2) On April 19, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P indicating that her non-severe impairment lacked duration, pursuant to 20 CFR 416.909.

- (3) On April 25, 2011, the department caseworker sent Claimant notice that her application was denied.
- (4) On July 18, 2011, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On August 31, 2011 and June 5, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled. (Department Exhibit B, p 1; Department Exhibit C, p 1).
- (6) Claimant has a history of aneurysms, hypertension, chronic obstructive pulmonary disease (COPD) and chronic headaches.
- (7) At the time of the hearing, Claimant was 48 years old with a [REDACTED] birth date; was 5'8" in height and weighed 142 pounds.
- (8) Claimant is a high school graduate. Her work history includes cashiering and factory work.
- (9) Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

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 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

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

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

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 November, 2010. 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 aneurysms, hypertension, chronic obstructive pulmonary disease (COPD) and chronic headaches.

On December 19, 2011, Claimant saw her primary care physician complaining of headaches and dizziness. Her hypertension started in 2007 and was improving. Her headaches were severe and occurred daily lasting more than an hour on the parietal left. She had radiation to the neck. Her symptoms were aggravated by exercise and head position with associated symptoms of dizziness. The headaches began after the aneurysm coiling in November 2010. Claimant was instructed to continue the Lisinopril and to quit smoking. She was prescribed Amitriptyline for headache prevention and Vicodin when needed for severe headaches. (Claimant Exhibit A, pp 45-47).

On January 5, 2011, Claimant met with her neurologist. Claimant had been admitted to the hospital on November 17, 2010, secondary to an acute onset of a severe headache. Her evaluation showed a 1.8 by 1.5 cm giant berry aneurysm of the supraclinoid left

internal carotid artery. There was no evidence of subarachnoid hemorrhage. An endovascular coiling of the aneurysm was performed. She had a good recovery and was discharged home on 11/21/10. Claimant saw her primary care physician for follow-up on 12/9/10 complaining of severe headaches and was given a steroid taper over a five day period which she thought was helpful. Claimant stated that she has had a headache daily, but it seems to be positional. She stated that the pain is on the left side of her head. She also has an intermittent left eye twitch and some questionable speech issues. She stated that initially she had some right hand numbness and tingling, however that was no longer happening. There appears to be a left side ptosis. Impression: Left internal carotid artery supraclinoid berry aneurysm, non-ruptured status post endovascular coiling; headache; hypertension and chronic tobacco use. (Department Exhibit A, pp 6-7).

On February 15, 2011, a cat scan of Claimant's head revealed an intercurrent development of a 13 x 8 mm area of encephalomalacia involving the left posterior, superior mesial occipital lobe. The giant aneurysm coil mass significantly obscured the CTA examination secondary to direct opacification and prominent streak artifact. Coil compaction and recanalization could not be evaluated. A small inferior pointing outpouching arising from the infraclinoid right internal carotid was suggested. (Claimant Exhibit A, pp 9-10).

On April 30, 2011, Claimant underwent a medical examination by the Disability Determination Service on behalf of the department. Claimant reported a history of hypertension. She also reported a past diagnosis of cerebral aneurysms which apparently were treated with a coiling procedure. Her blood pressures appeared to show adequate control. There was no evidence of end organ damage and there was no hypertensive retinopathy, peripheral vascular disease or evidence of congestive heart failure. Continued medical management appeared warranted. Claimant also reported a history of headaches. She reported a previous treatment for an intracranial aneurysm. She reported chronic head discomfort involving the left side of her head with intermittent exacerbations for which she will use analgesics. Her neurological examination was not outside normal limits. She reported that she has regular follow-ups which apparently show no intracranial bleed or recurrence of the aneurysm. (Department Exhibit B, pp 3-5).

On May 23, 2011, Claimant underwent a diagnostic cerebral angiogram which showed the previously coiled giant left supraclinoid internal carotid artery aneurysm was obliterated. There was no evidence of coil compaction, recanalization, or aneurysm growth. There was a right intraclinoid aneurysm measuring less than 2 mm. This was stable compared to the prior catheter angiogram on 11/17/10. There were no other intracranial aneurysms present. (Claimant Exhibit A, pp 4-6).

On June 16, 2011, Claimant saw her primary care physician complaining of vaginal bleeding. With the vaginal bleeding she was also experiencing, fatigue, clotting, cramps and swelling. This was Claimant's first period since November 2010 and her 8th day of

heavy bleeding. She was diagnosed with excessive or frequent menstruation, perimenopausal. (Claimant Exhibit A, pp 48-50).

On June 27, 2011, Claimant went to the emergency department complaining of heavy vaginal bleeding and passing clots. A pelvis/transvaginal ultrasound revealed a mild cystic enlargement of the left ovary. No solid adnexal mass. Normal arterial waveform in the left ovarian artery on the color Doppler images. The uterus and endometrium were normal and there was a tiny amount of free fluid in the cul-de-sac noted. Claimant was diagnosed with dysfunctional uterine bleeding and a left ovarian cyst. (Claimant Exhibit A, pp 15-25).

On September 25, 2011, Claimant went to the emergency department complaining of a headache of gradual onset during the past three days. She underwent a CT scan study without contrast, which showed no new acute findings except for post aneurysm coil on the left. She was diagnosed with an acute headache, prescribed Vicodin and discharged in stable condition. (Department Exhibit A, pp 26-33).

On January 18, 2012, Claimant saw her primary care physician complaining of daily headaches which began 3 to 4 months ago. Her headaches appeared to have gotten worse on Amitriptyline. Claimant was instructed to stop the Amitriptyline and begin using Gabapentin before bedtime. (Claimant Exhibit A, pp 42-44).

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 physical 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 physical disabling impairments due to aneurysms, hypertension, chronic obstructive pulmonary disease (COPD) and chronic headaches.

Listing 3.00 (respiratory system) and Listing 4.00 (cardiovascular system) were considered in light of the objective evidence. Based on the foregoing, it is found that Claimant's impairment(s) 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 cashier and factory worker. 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 short distances, stand for 2 hours, sit for 2-3 hours and can lift/carry approximately 10 pounds. The objective medical evidence notes no 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 exist. 20 CFR 416.920. In consideration of 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 48 years old and was, thus, considered to be a younger individual for MA-P purposes. Claimant has a high school degree. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from Claimant to the Department to present proof that 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 aneurysms, hypertension, chronic obstructive pulmonary disease (COPD) and chronic headaches. The objective medical evidence notes no limitations. In light of the foregoing, it is found that Claimant maintains the residual functional capacity for work activities on a regular and continuing

basis which includes the ability to meet the physical and mental demands required to perform at least sedentary work as defined in 20 CFR 416.967(a). After review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.21, it is found that Claimant is not disabled for purposes of the MA-P program at Step 5.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds 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: 6/26/12

Date Mailed: 6/26/12

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

