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

IN THE MATTER OF:

[redacted]

Reg. No: 2011-48616
Issue No: 2009
Case No: [redacted]
Hearing Date:
November 10, 2011
Kalkaska 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, a telephone hearing was held on November 10, 2011. Claimant 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 January 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), Retro-MA and State Disability Assistance (SDA) 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 September 14, 2010, Claimant filed an application for MA, Retro-MA and SDA benefits alleging disability.

(2) On July 22, 11, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P indicating that she was capable of other work, pursuant to 20 CFR 416.920(f), based on Medical/Vocational Grid Rule 203.28. SDA was denied due to lack of duration.

(3) On July 27, 2011, the department caseworker sent Claimant notice that her application was denied.

(4) On August 15, 2011, Claimant filed a request for a hearing to contest the department's negative action.

(5) On September 27, 2011 and January 5, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled. (Department Exhibit B, pp 1-2; Department Exhibit C, pp 1-2).

(6) Claimant has a history of chronic migraines, post traumatic stress disorder (PTSD), asthma, fibromyalgia, syncope, rheumatoid arthritis, anxiety, traumatic brain injury (TBI), renal calculi, irritable bowel syndrome (IBS), gastroesophageal reflux disease (GERD), and non-epileptic seizures.

(7) On April 8, 2010, a CAT scan of Claimant's cervical/upper thoracic spine revealed no evidence of cervical spine or upper thoracic spine fracture or dislocation. Note was made of degenerative disc space narrowing and minimal degenerative osteophyte formation at the C6-C7 level. (Department Exhibit A, pp 311).

(8) On April 16, 2010, Claimant saw her physician for follow-up of syncope. Claimant fell at home on 4/8/10 and hit her head on the floor. The location of her pain was upper back, neck and head which she described as sharp and throbbing. She was diagnosed with myalgia and myositis as a result of a flare-up from her fall. (Department Exhibit A, pp 216-218).

(9) On June 28, 2010, Claimant was seen by her primary physician for pain and depression. Claimant reported that in spite of taking her medications regularly, her pain was worsening and she wondered what else she could do. Claimant was recently seen at U of M and was having 3 different types of blackouts. The studies showed Claimant had non-epileptic attack disorder and no true seizures. Claimant reported she was taking her anti-depressant medication regularly and was wondering if the Cymbalta should be increased again. Claimant was oriented to time, place and person and had a constricted affect. Claimant's physician increased the dosage of Cymbalta for her fibromyalgia. (Department Exhibit A, pp 207-209).

(10) On September 2, 2010, Claimant saw her primary physician complaining of migraines, depression and fibromyalgia. Claimant was experiencing daily migraines, and she reported the fibromyalgia was stable, but not good. She had dizziness, headaches, back pain, bone/joint symptoms and myalgia. Claimant was oriented to time, place and person and had a blunted affect. (Department Exhibit A, pp 192-194).

(11) On November 1, 2010, Claimant was evaluated by a neuropsychologist. Claimant walked slowly with the aid of a cane. Claimant was referred for

an evaluation of memory problems in the context of multiple head traumas. Claimant was in a coma due to drug and alcohol overdose in 1990, and cardiac arrest twice in 1989 due to anaphylaxis. Claimant reported having several head injuries with loss of consciousness in her life, the first at 9 years old, the second at 15 years old and two at the age of 18. The neuropsychological evaluation from 2002 was reviewed and showed that Claimant did well on most cognitive tests. There may have been some minor cognitive slowing, possibly due to psychological issues, but all other cognitive test scores were well within normal limits. Overall, Claimant appeared to put forth her best effort during the evaluation. Results of the evaluation indicated Claimant is of high average verbal intelligence and average non-verbal intelligence. Claimant demonstrated significantly impaired sustained attention and processing speeds, with milder deficits on tasks of working memory and visuomotor processing. Although direct comparisons could not be made to Claimant's 2002 neuropsychological evaluation, her verbal and nonverbal intellect remained stable but working memory and processing speed skills had significantly declined. The psychologist opined that the pattern of some of her declines was not suggestive of Alzheimer's type dementia. Her reported improvement in cognition since 2001 and then decline over the past year or so was not consistent with long-term effects of head injury or a post concussive syndrome. While the impact of non-epileptic seizures on her cognitive difficulties and the side effects of her many medications could not be ruled out, the factors most likely impacting her cognitive complaints and current cognitive inefficiency were her level of psychological distress, pain, and poor sleep. Claimant reported mild depression and severe anxiety which certainly could account for her performances and complaints. A medication re-evaluation was strongly recommended. (Department Exhibit A, pp 10-15).

(12) On February 21, 2011, Claimant was in the emergency room with dizziness. While ER staff was trying to obtain orthostatic blood pressures, Claimant appeared to have passed out upon standing, and she was lowered to the floor by staff. Claimant reported that since the night before she has had episodes of dizziness where she goes to stand up and she gets so dizzy she has to slump to the ground and becomes nauseas. Any head turning reproduces Claimant's vertigo. Claimant was diagnosed with positional vertigo, prescribed Antivert and discharged. (Claimant Exhibit A, pp 71-90).

(13) On April 19, 2011, Claimant saw her primary physician for migraines. She was assessed with chronic post-traumatic headaches, and was prescribed Hydroxyzine and Levertiracetam. Claimant was alert and oriented to person, place and time. Her attention span and concentration were intact. She was using a cane for ambulation. (Department Exhibit A, pp 7-9).

(14) On July 19, 2011, Claimant was referred to the emergency department after passing out in her primary physician's office and hitting her head on

the floor. Claimant stated she passes out on a regular basis and has been doing so for years. Claimant normally ambulates with the assistance of a walker. CBC, and a complete metabolic were obtained. She had slight white count 11.0, neutrophils 6.4, otherwise all limits were within normal. Diagnosed with probable syncope and discharged. (Claimant Exhibit A, pp 30-46).

(15) On August 23, 2011, a CAT scan of Claimant's pelvis and kidneys revealed two 1 mm calculi in the right kidney lower pole and small pelvic calcifications which were felt to be vascular in nature. (Claimant Exhibit A, pp 13-14).

(16) On September 16, 2011, Claimant was seen at [redacted] for abdominal pain and intermittent rectal bleeding. She had a noncontrasted CAT scan of her pelvis on 8/23/11 with kidney protocol which showed a small right nonobstructing renal calculi. Abdominal pain with rectal bleeding suspected to be related to either infectious etiology versus perirectal etiology. Other considerations such as irritable bowel syndrome (IBS) were less likely. Claimant was diagnosed with chronic abdominal pain, constipation predominant secondary to meds with history of IBS. (Claimant Exhibit A, pp 1-5).

(17) On November 1, 2011, Claimant was evaluated for intermittent hemoptysis. Claimant had a known history of asthma and gastroesophageal reflux disease (GERD). Creatinine is borderline elevated at 1.2. Claimant will be scheduled for pulmonary function tests and CAT scan of chest. (Claimant Exhibit A, pp 7-11).

(18) At the time of the hearing, Claimant was [redacted] old with an [redacted] birth date; was 5'0" in height and weighed 159 pounds.

(19) Claimant is a high school graduate. Her work history includes waitressing and providing day care.

(20) 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 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).

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 2005. 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 chronic migraines, post traumatic stress disorder (PTSD), asthma, fibromyalgia, syncope, rheumatoid arthritis, anxiety, traumatic brain injury (TBI), renal calculi, irritable bowel syndrome (IBS), gastroesophageal reflux disease (GERD), and non-epileptic seizures.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). 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 the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the 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. The Claimant has alleged physical and mental disabling impairments due to chronic migraines, post traumatic stress disorder (PTSD), asthma, fibromyalgia, syncope, rheumatoid arthritis, anxiety, traumatic brain injury (TBI), renal calculi, irritable bowel syndrome (IBS), gastroesophageal reflux disease (GERD), and non-epileptic seizures.

Listing 1.00 (musculoskeletal system), Listing 3.00 (respiratory system), Listing 5.00 (digestive system), and Listing 12.00 (mental disorders) were considered in light of the objective evidence. Based on the foregoing, it is found that the Claimant's impairment(s) does not meet the intent and severity requirement of a listed impairment; therefore, the 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 maid 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 short distances and can lift/carry approximately 20 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 no limitations, Claimant retains the ability to return to past relevant work and no further analysis is required.

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, Retro-MA and SDA 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: 3/9/12

Date Mailed: 3/9/12

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