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



Reg No.: 2011-49974 Issue No.: 2009 Case No.: Hearing Date: November 9, 2011 Oakland County DHS (02)

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 Madison Heights, Michigan on Wednesday, November 9, 2011. The Claimant appeared, along wit h the second se

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 subm ission of additional m edical records. The evidence was received, reviewed, and forwar ded to the State Hearing Review Team (SHRT") for consideration. On January 20, 2012, this office received the SHRT determination which found the Cla imant not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department proper ly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") benefit program?

FINDINGS OF FACT

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

1. The Claimant submitt ed an application for public assistance seeking MA-P benefits, retroactive to February 2011, on May 2, 2011. (Exhibit 1, pp. 3 – 8)

- 2. On June 23, 2011, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 1, 2)
- 3. The Department notified the Claimant of the MRT determination.
- 4. On August 17, 2011, the Department received the Claimant's timely written request for hearing.
- 5. On September 28, 2011, the SHRT determined that the Claimant was not disabled. (Exhibit 3)
- 6. The Claim ant alleged physical disabling impairment due to back pain, muscle spasms, thyroid dis order (Hashimoto di sease), fibromyalgia, irritable bowel syndrome, and Hepatitis C.
- 7. The Claim ant alleged mental di sabling impairments due to anxiety and depression.
- 8. The Claimant is years old with a weighs 168 pounds.
- 9. The Claimant is a high school graduate with some college an employment history as a hostess and dancer.
- 10. The Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

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 Independenc e Agency, pursuant to MCL 400.10 *et seq.* and MCL 400.105. Department policies are found in the Bridge s Administrative Manual ("BAM"), the Bridges Elig ibility Manual ("BEM"), and the Bridges Reference Tables ("RFT").

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental im pairment which can be expected to result in death or which has lasted or can be expect ed to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claimi ng a physical or mental disability has the burden to esta blish it through the use of competent medical evidenc e from qualified medical sources such as his or her medical history, clinica l/laboratory findings, diagnosis/prescri bed treatment, prognosis for recovery and/or medical

assessment of ability to do work-related ac tivities o r ability to reason and make appropriate mental adjustments, if a mental disab ility is alleged. 20 CRF 413 .913. An individual's subjective pain com plaints ar e not, in and of themselves, sufficient to establish disab ility. 20 CF R 416.908; 2 0 CFR 4 16.929(a). Similarly, conclusor y statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, t he federal regulations require several factors to be considered including: (1) the location/ duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applica nt takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determi ne the ext ent of his or her functi onal limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The fivestep analysis requires the trier of fact to cons ider an individual's current work activit y; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to det ermine whether an individual can perform past relev ant work; and residual functional I capacity along with vocational factors (i .e. age, education, and work experienc e) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4). If a that an individual is disabled, or not disabled, at determination cannot be made а particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an indi vidual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual f unctional capacity is the most an indiv idual can do d espite the limitations based on all relevant evidence. 20 CF R 945(a)(1). An individual's residual functional capacity assessment is evaluat ed at both steps four and five. 20 CF R 416.920(a)(4). In determining disability, an i ndividual's functional capacity to perform basic work activities is evaluated and if found that the individ ual h as the ability to perform basic work activities without significant limitation, disability will not be found. 20 ndividual has the responsibility to prove CFR 416.994(b)(1)(iv). In general, the i disability. 20 CFR 4 16.912(a). An impair ment or combination of impairments is n ot severe if it does not signific antly limit an i ndividual's physical or m ental ability to do basic work activities. 20 CFR 416.921(a). The in dividual has the 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 i ndividual's current work activity. In this case, the Claimant is not workin g and, thus, is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impa irment(s) is considered under St ep 2. The Claimant bears the burden to pr esent sufficient objective medical evidenc et o substantiate the alleged disa bling impairments. In order to be considered disabled for MA purpos es, the impairment must be se vere. 20 CFR 916. 920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it signific antly limits an in dividual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

- 1. Physical functions such as wa lking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- 2. Capacities for seeing, hearing, and speaking;
- 3. Understanding, carrying out, and remembering simple instructions;
- 4. Use of judgment;
- 5. Responding appropriately to supervision, co-workers and usual work situations; and
- 6. Dealing with changes in a routine work setting.
- ld.

The second step allows for dismissal of a di sability claim obviously lacking in medical merit. *Higgs v Bowe n,* 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an admin istrative convenience to screen o ut claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services,* 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qu alifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services,* 774 F2d 685, 692 (CA 6, 1985).

In the present case, the Claim ant alleges disability due to bac k pain, osteomyelitis, muscle spasms, thyroid disorder (Hashimoto disease), fibromyalgia, ir ritable bowel syndrome, Hepatitis C, anxiety, and depression.

On **Construction** the Claimant presented to the hos pital with bilateral toe infections. The Claimant's thyroid stimulating hormone level was 113.73. A MRI of the left foot showed subtle bone marrow signal abnormality and enhancement in the distal tuft of the first digit (possible early os teomyelitis) and edem a and enhancement with swelling of the first toe, most likely related cellu litis and phlegm onous changes. The Claimant was discharged on **Construction** with the diagn oses of bilateral toe pain secondary to in-grown toenails, osteomyelitis of the left foot, hypothyroidism , heparin-induced thrombocytopenia with out thrombosis, chronic back pain, drug-induced rash, anxiety, genital herpes, ear pain, and Hepatitis C.

On **Contract of** the Claimant underwent excision of ingrown nail on both great and second toes without complication.

On **Characteristic** a Medical Examination Report was completed on behalf of the Claimant. The current diagnos es we re hypothy roidism, heparin-ind uced thrombocytopenia, in-grown/infected toe nails, depression, osteomyelitis (treated), and chronic back pain. The Claimant's condition was improving and s he was found able to meet her needs in the home.

On the Claimant presented to the hospital with infect ed big toes bilaterally and in-grown second digit bilaterally. As a result, a bilateral hallux Win ograd procedure of the medial and lateral borders; phenol and alcohol matricectomy; and left second digit nail medial border and right s econd digit lateral border were performed without complication.

On the Claimant attended a c onsultative psychiatric evaluation. The diagnoses were bipolar II disorder, alco hol, cannabis, and cocaine dependence (in remission-self reported), and panic disorder with agoraphobia. The Global Assessment Functioning ("GAF") was 55 and her prognos is was poor. The Claimant was found unable to manage benefit funds.

On **the Claimant attended a c** onsultative evaluation. The physical examination found the Claimant unable to fully bend or squat and was unable to walk on her heels or toes. The Claim ant had decreased range of moti on over her cervical and lumbar spine with tenderne ss and muscle s pasms. The Claimant also had t enderness and decreased range of motion in her shoulders and wrists. The Claimant suffered from multiple medical problems with her back, joint, and muscle pain being the main problems. As a result, the Cla imant's activity is almost none due to the severity of her pain.

On **Claimant**. The current diagnos es were ost eomyelitis, increased pain, carpal tunnel syndrome, back pain, degenerative disc disease, ulnar neuropathy, anxiety, depression, and fibromyalgia. The Claimant was restricted to the occasional lifting/carrying of les s than 10 pounds; standing and/or walking less than 2 hours in an 8 hour workday; sitting less than 6 hours during this same time from ame; and able to per form fine manipulation with her upper extremities. The Claimant required special shoes for walking. Mentally, the Claimant was limited in social interactions and required a ssistance with household duties.

As previously noted, the Claim ant bears t he burden to present sufficient objective medical evidence to s ubstantiate the alleged disabling impairment(s). As summarized above, the Claimant has presen ted medical evidence establis hing that she does hav e some physical and mental limitations on her ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimus* effect on the Claimant's basic work activities. Further, the impairments have la sted continuous ly for twelve months; therefore, the Claimant is not disgualified from receipt of MA-P benefits under Step 2.

In the third step of the seque ntial an alysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or co mbination of impairm ents, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claim ant has alleged physical and mental disabling impairments due to back pain, osteomye litis, muscle spasms, thyroid disorder (Hashimoto disease), fibromyalgia, irritable bowels yndrome, Hepatitis C, anxiety, and depression.

Listing 1.00 (musculoskeletal system), Listi ng 5.00 (digestive dis orders), Listing 9.00 (endocrine disorders), Listing 12.00 (mental disorders), and Listing 14.00 (auto immune disorders) were considered in light of t he objective medical ev idence. Based on the foregoing, it is found that the Claimant's impairments do not meet the intent and severity requirement of a listed impairment and, t hus, she cannot be found disabled, or not disabled, at Step 3. Accordingly, the Claimant's eligibility under Step 4 is required. 20 CFR 416.905(a).

The fourth step in analyzing a dis ability claim requires an assessment of the Claimant's residual f unctional capacity ("RFC") and pas t relevant employment. 20 CF R 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. Id.; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to lear n the position. 20 CF R 416.960(b)(1). Vocational fact ors of age, education, and work experience, and whet her the past relevant employment exists in significant numbers in the natio nal economy is not consider ed. 20 CF R 416.960(b)(3).

RFC is as sessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are c lassified as sedentary, light, medium, heavy, and very heavy. 2 0 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary j ob is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Id. Jobs are sedentary if walking and standing are r equired occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though 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 invo lves sit ting 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 thes e activities. Id. A n individual capab le of light work is also capable of limiting factors such as loss of fin sedentary work, unless there are additionally е 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 tim e with frequent lifting or carrying of object s weighing up to 50 pounds. 20 CFR 416.967(d). A n individual capable of heavy work is also c apable 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, walk ing, lifting, carrying, pushing, or pulling) are consider ed nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparis on of the individual's residual functional c apacity with the demands of past relevant work. ld. If an individual can no longer do past relevant work the same residual functional capacity assessment along with an individual's a ge, 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 physic al feature(s) of certain work settings (i.e. ca n't tolerate dust or fumes); or di fficulty performing the

manipulative or postur al functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 4 16.969a(c)(1)(i) – (vi). If the imp airment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CF R 416.969a(c)(2). The determination of whether disability exists is bas ed upon the pr inciples in the appr opriate sections of the regulations, giving consideration to the rules for r specific case situations in Append ix 2. *Id.*

Over the last 15 years, the Claimant worked as a hostess and dancer. In light of the Claimant's testimony and in consideration of the Oc cupational Code, the Claimant's prior work history as a hostess is classi fied as unskilled light work, while the employment as an exotic dancer is semi-skilled light work.

The Claimant testified that s he has difficult ies walking long distances and is unable to lift/carry 10 pounds. The most recent Medica I Examination Report from the Claimant's treating physician limits her to less than s edentary activity. Ment ally, the Claimant's ability for social interaction is limited. If the impairment or comb ination of im pairments 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 consideration of the Claimant's testimony and medica I records, it is found that the Claimant is unable t o return to past relevant work. Accordingly, the Claimant cannot be found disabled, or not disabled, at Step 4; thus the fifth step in the sequential analysis is required.

In Step 5, an assessment of the individua I's residual functional capacity and age, education, and work experience is consider ed to determine whet her an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, the Claimant was 34 years old thus consider ed to be a y ounger individual for MA-P purposes. The Claimant is a high school graduate with some college. 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 residu al 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 subs tantial evidence that the indiv idual has the vocational gualifications to perform specif ic 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).

In the record presented, the total impact caused by the combination of the physical and mental problems suffered by the Claimant must be considered. Diagnos es include

status post osteomyelitis to the I eft great toe with major infection on the right, ulnar neuropathy, Hashimoto's thyroiditis, Hepatitis C, fibromyalgia, bac k pain, degenerative disc disease, depression, and panic dis order with agoraphobia. The consultative evaluation found the Claimant's activity is "almost none due to the severity of her pain." Similarly, the treating physician placed the Cla imant at less than sedentary activity. In light of the foregoing, it is found that the combination of the Claimant's physical an d mental impairments have an effect on her ability to perform basic work activities such that, at this time, the Claimant is unable to meet the physica I and mental demands necessary to perform even sedentary work as defined in 20 CFR 416.967(a). After review of the entire record, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

DECISION AND ORDER

The Administrative Law Judge, based upon t he above findings of fact and conclusion s of law finds the Claimant disabled for purposes of the MA-P benefit programs.

Accordingly, it is ORDERED:

- 1. The Department's determination is REVERSED.
- 2. The Department shall in itiate processing of the May 2, 2011application, retroactive to February 2011, to determine if all other non-medical criteria are met and inform the Claimant and her Aut horized Hearing Representative of the determination in accordance with Department policy.
- 3. The Department shall supplement for any lost lost benefits that the Claimant was entitled to receive (if any) if otherwise eligible and qualified in accordance with Department policy.
- 4. The Department shall review the Claimant's continued eligibility in accordance with department policy in February 2013.

Collin M. Mamilka

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

Date Signed: January 26, 2012

Date Mailed: January 26, 2012

NOTICE: Michigan Administrative Hearing Syst em (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a par ty within 30 days of the mailing date of this Dec ision and Order . MAHS will not order a rehearing or reconsideration on the Department's mo tion where the final decis ion cannot be implemented within 90 days of the filing of the original request. (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 ti mely 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 <u>MAY</u> be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration <u>MAY</u> 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 affect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

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

CMM/cl

