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

IN THE MATTER OF:

[redacted]

Reg. No.: 2011-52548
Issue No.: 2009; 4031
Case No.: [redacted]
Hearing Date: January 11, 2012
County: Ottawa County

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 January 11, 2012. 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 April 10, 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)?

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 June 15, 2011, Claimant filed an application for MA, Retro-MA, and SDA benefits alleging disability.

(2) On August 10, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that she was capable of performing other work, pursuant to 20 CFR 416.920(f). SDA was denied for lack of duration.

(3) On August 18, 2011, the department caseworker sent Claimant notice that her application was denied.

(4) On August 22, 2011, Claimant filed a request for a hearing to contest the department's negative action.

(5) On November 2, 2011, and April 10, 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 degenerative disc disease, scoliosis, lumbago, asthma, attention deficit hyperactivity disorder (ADHD), attention deficit disorder (ADD), obsessive-compulsive disorder (OCD), chronic obstructive pulmonary disease (COPD), osteoarthritis, degenerative joint disease, and fibromyalgia.

(7) On September 14, 2009, Claimant underwent a Medical Examination on behalf of the department. Claimant had a history of low back pain, neck pain, bipolar disorder, and was currently diagnosed with lumbar disc disease, cervical disc disease, and stenosis. Her gait was normal. She was wheezing. Neurologically, she had psychomotor agitation, constant movement and twitching. Mentally, she was scattered, random eye contact, and her memory was vague. The examining physician opined that Claimant's condition was deteriorating with physical limitations. Claimant was limited to lifting less than 10 pounds 2/3 of an 8 hour day, and 10 pounds 1/3 of an 8 hour day. Claimant could stand or walk less than 2 hours in an 8 hour day. Claimant was capable of simple grasping, but could not reach, push, pull, or do fine manipulation with either her hands or arms. Claimant had decreased cervical range of motion to 20 percent with pain, and subjective paresthesia in her fingertips. Lumbar range of motion was very limited to 20 percent with pain. Increased lordosis and positive single leg raising bilaterally. Mentally, her memory and sustained concentration were limited, based on her demonstration of lack of concentration, vagueness of remote event, and psychomotor agitation. (Department Exhibit A, pp 58-59).

8) On July 16, 2010, Claimant was assessed by a psychiatric mental health nurse practitioner at [redacted]. Claimant was quite squirmy and fidgety during the appointment. She was avoidant of eye contact. She acknowledged having suicidal thoughts, but was able to contract for safety. She reported a depressed mood. She had a sad affect and appeared embarrassed. Diagnosis: Axis I: Rule out Bipolar II Disorder; Rule out Major Depressive Disorder, severe, without psychotic features; history of cocaine and alcohol abuse; Axis III: Scoliosis,

Degenerative Disc Disease, Narrowing of the spine; Axis V: GAF=35. (Department Exhibit A, pp 35-38; 262-266).

(9) On August 19, 2010, Claimant saw her primary physician complaining of seizures. She had one recently and the paramedic told her it was a seizure. She always thought they were anxiety attacks, and thought she should be evaluated. She has had these episodes for a couple of years. They can be as frequent as 1 to 2 times a month. She used to be on anticonvulsants for bipolar disorder, but has not been recently and she thinks that there may be an increase in symptomology since then. Her episodes are usually provoked by stress. (Department Exhibit A, p 74).

(10) On November 11, 2010, Claimant went back to her primary care physician for her EEG results. The results had not arrived, but she had not had any more episodes of possible seizures since the last time. She was convinced, as was her primary care physician, that they were most likely panic attacks. She continues to smoke. She has had more wheezing and chronic morning coughing recently. She was alert, oriented, and somewhat distant with fair eye contact. Breath sounds reveal scattered wheezing throughout with no rales or consolidation. She was diagnosed with chronic pain and asthmatic bronchitis. (Department Exhibit A, p 73).

(11) On January 28, 2011, Claimant had a CAT scan of her cervical spine which showed degenerative disc disease with intervertebral disc space narrowing at C4-C5, C5-C6, and C6-C7 levels. There was also modest hypertrophic changes present at C4, C5, and C6 anteriorly. The CAT scan of Claimant's lumbar spine revealed mild rotoscoliosis of the lumbar spine with severe disc space narrowing at L2-L3, and L3-L4, with sclerotic change of the end plates. There was also mild spur formation and circumferential disc bulges at L2-L3, L3-L4, and to a lesser degree L4-L5. The CAT scan of Claimant's thoracic spine showed scoliosis of the thoracic spine. There were some limitations secondary to Claimant's motion. (Department Exhibit A, pp 101-103).

(12) On April 5, 2011, Claimant underwent a psychological evaluation by the Disability Determination Service. She complained of having problems with memory and concentration that had been worse over the past 2 years; and she had always had problems with concentration, attention, and focus since she was a child. She is easily distracted and does not finish what she begins. She becomes hyper and restless. She has an extremely limited interest and activity level currently. She described her sleep as "horrible," having trouble getting to sleep and staying asleep and averaging 5 hours per night. She was cooperative, but rather subdued and very nervous with shaky legs. She complained of having seizures beginning 7 months ago, and her last seizure was 3 months ago. She has a history of 2 suicide attempts as a teenager. Her affect was both

depressed and anxious. She does withdraw from others and isolate herself. She has no interest or motivation. Diagnoses: Axis 1: Major Depressive Disorder-recurrent, moderate; Generalized Anxiety Disorder; History of Alcohol and drug abuse in remission; Axis III: Complaints of chronic back pain; Axis V: GAF=50. Prognosis: The potential for Claimant becoming gainfully employed in a simple, unskilled work situation on a sustained and competitive basis is guarded pending medical resolution and her compliance with psychiatric treatment. (Department Exhibit A, pp 17-21).

(13) On April 6, 2011, Claimant underwent a medical examination on behalf of the department. Claimant has scoliosis, bulging discs, degenerative disc disease, seizures, depression, anxiety, OCD, and ADD. Her biggest concern is her lower back which also includes her right lateral hip. She used to be on Norco for years, but lately uses Motrin. She did have therapy which made it worse and injections which helped temporarily. Concerning seizures, she believes that is simply a stress reaction. These episodes last up to four minutes and include generalized shaking. An EEG was normal. The last episode occurred three weeks ago. Impressions: (1) Lumbar pain, bulging and degenerative discs, and scoliosis; (2) Mental health problems; (3) Shaking episodes without seizure features. Years into the problem, deconditioning may be a substantial issue. To start, she would need a job that allows frequent position change and not much lifting or bending. (Department Exhibit A, pp 11-16).

(14) On September 26, 2011, Claimant completed a Psychosocial Assessment and Update through Ottawa Community Mental Health (CMH). Claimant reports being severely depressed and having this depression interfere with her ability to eat, sleep, focus, concentrate, or have the ability to even do mundane things such as getting up, dressing, keeping her living area clean, being able to interact with others or have normal conversations. Claimant states that she has lost interest in many things she used to like to do and had a difficult time getting motivated. Claimant often feels overwhelmed and isolates herself during these times. Claimant has a long history of verbal, mental, emotional, physical and sexual abuse starting with an alcoholic and drug-using mother who did not care for her needs and allowed the sexual abuse. Diagnoses: Axis I: Obsessive Compulsive Disorder; Axis II: Borderline Personality Disorder; Axis IV: History of Domestic Violence Abuse, substance and alcohol abuse; Axis V: GAF=50. (Claimant Exhibit A, pp 8-12).

(15) On October 11, 2011, Claimant saw her primary care physician for follow-up of her shoulder joint separation. She fell backwards in a chair 2 months ago and went to the emergency department for back pain and then increased right shoulder pain. The degenerative arthritis changes in

her back were on her initial x-rays on 8/1/11. She went back to the emergency department on 9/12/11 for increased right shoulder pain, and the x-ray showed a first degree shoulder separation. She was put in a sling for two weeks and has pain with use of the shoulder. She had right shoulder pain with abduction after 90 degrees and positive pain with rotation. (Department Exhibit A, pp 32-34).

(16) On October 14, 2011, Claimant underwent a psychiatric evaluation. Claimant had been on social security disability for four years but it was stopped about four months ago because of a change of address. She last worked as a bartender and waitress until about three years ago when she went on social security disability due to disc degeneration in her back. She graduated from high school but was in special education because of her problems with attention and concentration. She is quite anxious and acknowledges that. Mild tremor is noted and she is somewhat fidgety. Her speech is somewhat disjointed at times but does not show disturbance of associations. Cognition is grossly intact, although there is some difficulty with memory of details. Her sleep is poor with frequent awakening. She has OCD symptoms of moderate degree manifested by compulsive counting and arranging. She has panic attacks three or four times per month which are generally spontaneous. She has diminished energy. She has episodes of tearfulness. There are mood swings, both up and down. These involve the upswings suggestive of manic or hypomanic episodes, but have resulted in the past with increased drug use and illegal activity. She has trouble remembering things and concentrating. Diagnoses: Axis I: Bipolar Disorder, Diagnosis of OCD, ADHD; Axis II: Borderline personality disorder by history; Axis III: Chronic back pain with degenerative disc disease; Axis IV: Current lack of Social Security Disability and lack of occupation; Axis V: GAF=57. Claimant's OCD does not require treatment at this time and apparently she is not requesting treatment for ADHD which she has not had since she has been an adult. The recent history of bipolar disorder appears rather convincing and report of having done well on Lithium helps in formulating the treatment plan. She was started on Lithium. (Claimant Exhibit A, pp 3-5).

(17) On November 11, 2011, Claimant saw her psychiatrist for follow-up of the Lithium prescription. She has been taking the Lithium daily without side effects but feels that it is having an incomplete benefit. She has racing thoughts which are an old problem and may reflect the ADHD which was diagnosed in childhood for which she took Ritalin until she was 12 years old. Her mood today appears mild to moderately dysphoric and she appears rather tense. Lithium dose was increased. (Claimant Exhibit A, p 6).

(18) On January 5, 2012, Claimant saw her primary care physician for back pain. The problem is fluctuating and persistent. She has a history of

scoliosis, in her upper and lower back, preventing her from sitting or walking for long periods. Her shoulder has improved but is not completely healed. (Claimant Exhibit A, pp 29-31).

(19) On February 13, 2012, Claimant saw her primary care physician for back pain, onset 9 years ago. The problem is worsening. It occurs persistently. Location of pain was upper and lower back. (Claimant Exhibit A, pp 26-28).

(20) Claimant is a 50 year old woman whose birthday is [redacted]. Claimant is 5'8" tall and weighs 170 lbs. Claimant completed high school.

(21) 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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

> Sec. 604 (1). The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:
>
> (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days.

> Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

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).

In Claimant's case, the ongoing back and neck pain, and other non-exertional symptoms she describes are consistent with the objective medical evidence presented. Consequently, great weight and credibility must be given to her testimony in this regard.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).

2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).

3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).

4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).

5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

Claimant has not been employed since 2002; consequently, the analysis must move to Step 2.

In this case, Claimant has presented the required medical data and evidence necessary to support a finding that Claimant has significant physical and mental limitations upon her ability to perform basic work activities.

Medical evidence has clearly established that Claimant has an impairment (or combination of impairments) that has more than a minimal effect on Claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63.

In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective medical findings, that Claimant cannot return to her past relevant work because the rigors of working as a waitress are completely outside the scope of her physical and mental abilities given the medical evidence presented.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

(1) residual functional capacity defined simply as "what can you still do despite you limitations?" 20 CFR 416.945;

(2) age, education, and work experience, 20 CFR 416.963-.965; and

(3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once Claimant reaches Step 5 in the sequential review process, Claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services,* 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that Claimant has the residual functional capacity for substantial gainful activity.

After careful review of Claimant's medical record and the Administrative Law Judge's personal interaction with Claimant at the hearing, this Administrative Law Judge finds that Claimant's exertional and non-exertional impairments render Claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). Based on Claimant's vocational profile (approaching advance age, Claimant is 50, has a 12th grade education and an unskilled work history), this Administrative Law Judge finds Claimant's MA, Retro/MA

and SDA are approved using Vocational Rule 201.12 as a guide. Consequently, the department's denial of her April 15, 2011, MA/Retro-MA and SDA application cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining Claimant is not currently disabled for MA/Retro-MA and SDA eligibility purposes.

Accordingly, the department's decision is REVERSED, and it is Ordered that:

1. The department shall process Claimant's April 15, 2011, MA/Retro-MA and SDA application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.

2. The department shall review Claimant's medical condition for improvement in April, 2014, unless her Social Security Administration disability status is approved by that time.

3. The department shall obtain updated medical evidence from Claimant's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

It is SO ORDERED.

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

Date Signed: 4/27/12

Date Mailed: 4/27/12

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

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