

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-34135
Issue No: 2009
Case No: [REDACTED]
Hearing Date:
August 31, 2011
Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. After due notice, an in-person hearing was held on August 31, 2011. Claimant personally appeared and testified, represented by [REDACTED]

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 31, 2012, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

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

FINDINGS OF FACT

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

- (1) On October 21, 2010, Claimant filed an application for MA and Retro-MA benefits alleging disability.
- (2) On January 18, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that she had a non-severe impairment, pursuant to 20 CFR 416.920(c).

- (3) On February 12, 2011, the department caseworker sent Claimant notice that her application was denied.
- (4) On May 12, 2011, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On June 15, 2011, the State Hearing Review Team (SHRT) found Claimant was not disabled based on Medical Vocational Grid Rule 202.22, because she retained the capacity to perform a wide range of light work. (Department Exhibit B, pp 1-2).
- (6) On January 31, 2012, the SHRT found Claimant was not disabled based on Medical Vocational Grid Rule 202.22, because she retained the capacity to perform medium work. (Department Exhibit C, p 1).
- (7) Claimant has a history of rheumatoid arthritis, fibromyalgia, back pain, pelvic pain, unspecified myalgia and myositis, high blood pressure, hypothyroidism, endometriosis, irritable bowel syndrome (IBS), diverticulosis, anxiety, depression, panic disorder, gastrointestinal ulcers, colitis, spondylolisthesis, and high cholesterol.
- (8) On December 12, 2008, Claimant underwent an esophagogastroduodenoscopy (EGD) with biopsy, for an acute upper GI bleed with hematemesis and melena. She required transfusion. Bleeding believed to have been a result of her use of Motrin. She was instructed to stop her Carafate and avoid aspirin and nonsteroidal anti-inflammatory drugs. (Department Exhibit A, pp 61-63).
- (9) On February 4, 2009, Claimant's chest x-rays revealed persistent elevation of the right hemidiaphragm. No acute infiltrate evidence. (Department Exhibit A, p 48).
- (10) On March 11, 2009, x-rays of Claimant's lumbosacral spine showed grade I spondylolisthesis of L5 with respect to S1 is secondary to bilateral spondylolysis. Contrast in the rectum versus calcified uterine fibroid. (Department Exhibit A, p 46).
- (11) On April 17, 2009, Claimant's chest x-ray revealed borderline cardiomegaly with left ventricular predominance. No acute intrathoracic process. (Department Exhibit A, p 45).
- (12) On April 18, 2009, Claimant went to the [REDACTED] complaining of abdominal pain, nausea, vomiting and diarrhea. An ultrasound of the right upper quadrant for tenderness showed increased echogenicity of the liver parenchyma which may represent diffuse steatosis. Otherwise, the common bile duct is within normal limits at 0.4

cm and no abnormality was seen. She also underwent a CAT scan of her abdomen which showed a left adrenal nodularity. Otherwise, an unremarkable appendix and a fluid distended endometrium. She received multiple doses of dilaudid throughout the evening with persistent nausea and abdominal pain. She was admitted to the hospital for further evaluation of her colitis and abdominal pain. (Claimant Exhibit C, pp 1-4).

- (13) On April 19, 2009, Claimant's abdominal sonogram revealed the appearance of the liver was suggestive of diffuse fatty infiltration. The CAT scan of her abdomen/pelvis revealed splenomegaly and showed a left adrenal gland nodule measuring 1.1 cm, which was not compatible with a lipid rich adenoma. Statistically, it likely represented an adrenal adenoma in the absence of a history of malignancy. (Claimant Exhibit C, pp 5-6).
- (14) On April 21, 2009, Claimant underwent an upper GI endoscopy, revealing a normal esophagus, a normal stomach and no gross lesions in duodenum. (Claimant Exhibit C, pp 7-8).
- (15) On April 22, 2009, Claimant was discharged from the hospital with unresolved issues of abdominal pain, likely related to clostridium difficile colitis, awaiting biopsies. (Claimant Exhibit C, pp 9-13).
- (16) On June 8, 2009, Claimant was seen at the Michigan Gastroenterology Institute for follow-up for her recent hospitalization with clostridium difficile colitis. (Claimant Exhibit C, pp 14-17).
- (17) On August 25, 2009, Claimant went to the emergency room complaining of chronic abdominal pain and diarrhea and was admitted. Claimant has had multiple admissions for abdominal pain and diarrhea, including clostridium difficile colitis in the past starting in February, 2008. She was then admitted in June, July, and August 2008 with the same complaint. In December, 2008, she was admitted for hematemesis in setting of NSAID use and found to have a bleeding gastric ulcer. Claimant has had clostridium difficile colitis four times, last in July 2009. Claimant was discharged on August 28, 2009, with a diagnosis of post infectious irritable bowel syndrome. (Claimant Exhibit C, pp 34-48).
- (18) On September 23, 2010, Claimant went to the emergency room complaining of nausea and diarrhea with malaise. She was admitted to the hospital for acute appendicitis. A laparoscopic appendectomy was performed. She was discharged on September 24, 2010. (Department Exhibit A, pp 22-29).
- (19) On December, 2, 2010, Claimant had a consultation with the [REDACTED] regarding her current GI symptoms of worsening abdominal pain, nausea

and a 20-pound weight loss over the last several weeks. She had a gastric emptying study in November, 2010, which was normal. She has had three CAT scans, which were all normal, an ultrasound, and then EGD and colon. She underwent an appendectomy in September, which was a different constellation of symptoms than her current symptoms. (Claimant Exhibit C, pp 49-52).

- (20) On March 21, 2011, Claimant saw her rheumatologist for chronic and constant joint pain and myalgias. She complained of fatigue, double vision (blurred), ringing in her ears, runny nose, and dryness of mouth, hypertension, nausea, heartburn, nocturia, muscle weakness and muscle tenderness, easy bruising, headache, dizziness, memory loss, sensitivity or pain of hands and/or feet and spasms, excessive worries, anxiety, depression, and difficulty falling and difficulty staying asleep. (Department Exhibit B, pp 9-11).
- (21) On April 5, 2011, Claimant saw her physician for neck pain, located diffusely on the right side, described as chronic and constant. She complained of weight loss, fatigue, and weakness, ringing in the ears, joint pain, easy bruising, headache, difficulty falling asleep and staying asleep. (Claimant Exhibit A, pp 5-6).
- (22) On April 15, 2011, Claimant saw her primary physician for joint pain in her cervical spine, described as chronic and constant. She complained of fatigue, fever and weakness, chest pain/pressure and palpitations, shortness of breath, and joint pain and swelling in her right ankle, in addition to tender points all over the body, and spine, ribs, and pelvis. Spine was tender at the cervical spine. (Claimant Exhibit A, pp 3-4).
- (23) On April 20, 2011, Claimant's pelvic ultrasound revealed a rounded echogenic focus along the fundus of the endometrium raising suspicion for a small polyp or submucosal fibroid. Normal appearance to the right ovary. Subtle calcification and shadowing along the normal-sized left ovary. (Claimant Exhibit B, p 15).
- (24) On June 8, 2011, Claimant saw her primary physician for joint pain. She described it as chronic and constant. She complained of fatigue and weakness, shortness of breath, nausea, and headache. Complainant complained of difficulty falling asleep, and difficulty staying asleep, but denied excessive worries, anxiety, easily losing temper, depression and agitation. Overall normal mood and affect. (Claimant Exhibit A, pp 1-3).
- (25) On July 29, 2011, Claimant underwent a D and C hysteroscopy, Novasure ablation, operative laparoscopy with drainage of simple cyst. Surgery revealed thickened endometrium, one old lesion of endometriosis at the posterior cul-de-sac, simple ovarian cysts on the right ovary x2. The

laboratory report from the endometrial curettings and polyp –fragments of late proliferative to early secretory endometrium blood clot and fragments were consistent with benign endometrial polyp. The ovarian cyst fluid was negative for malignancy. Benign mesothelial cells and macrophages and low lining columnar cells present. (Claimant Exhibit B, pp 12-13, 16-)

- (26) On August 12, 2011, Claimant saw her doctor for a post-op visit. She had surgery on 7/29/11, and an ovarian cyst was removed with laparoscopy and draining. She was doing well. Remaining pain controlled with regular Tylenol. Denied bleeding. Discussed pathology. Benign polyp and benign cyst fluid. (Claimant Exhibit B, pp 1-2).
- (27) Claimant is a [REDACTED] woman whose birthday is [REDACTED]. Claimant is 5'3" tall and weighs 200 lbs. Claimant completed a bachelor degree.
- (28) 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, the Claimant is not involved in substantial gainful activity and testified that she has not worked since March 2008. 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 mean 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 rheumatoid arthritis, fibromyalgia, back pain, pelvic pain, unspecified myalgia and myositis, high blood pressure, hypothyroidism, endometriosis, irritable bowel syndrome (IBS), diverticulosis, anxiety, depression, panic disorder, gastrointestinal ulcers, colitis, spondylolisthesis, and high cholesterol.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the 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, the 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 rheumatoid arthritis, fibromyalgia, back pain, pelvic pain, unspecified myalgia and myositis, high blood pressure, hypothyroidism, endometriosis, irritable bowel syndrome (IBS), diverticulosis, anxiety, depression, panic disorder, gastrointestinal ulcers, colitis, spondylolisthesis, and high cholesterol.

Listing 1.00 (musculoskeletal system), Listing 5.00 (digestive system), Listing 9.00 (endocrine 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, the 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 travel agent and customer service representative. In light of Claimant's testimony, and in consideration of the Occupational Code, Claimant's prior work is classified as semi-skilled, sedentary work.

Claimant testified that she is able to walk short distances, sit indefinitely and can lift/carry approximately 15 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 the Claimant's testimony, medical records, and no current limitations, Claimant can be found able to return to past relevant work. Despite being found able to return to past relevant work, sequential analysis at Step 5 is continued.

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, the Claimant was 41 years old and was, thus, considered to be a younger individual for MA-P purposes. Claimant has a Bachelor's degree in Elementary Education. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant

has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). The age for younger individuals (under 50) generally will not seriously affect the ability to adjust to other work. 20 CFR 416.963(c).

In this case, the evidence reveals that Claimant suffers from rheumatoid arthritis, fibromyalgia, back pain, pelvic pain, unspecified myalgia and myositis, high blood pressure, hypothyroidism, endometriosis, irritable bowel syndrome (IBS), diverticulosis, anxiety, depression, panic disorder, gastrointestinal ulcers, colitis, spondylolisthesis, and high cholesterol. The objective medical evidence notes no limitations and Claimant testified that she is able to sit indefinitely. 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 201.22, it is found that the 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 the Claimant not disabled for purposes of the MA-P benefit programs.

Accordingly, it is ORDERED:

The Department's determination is AFFIRMED.

/s/

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

Date Signed: 3/7/12

Date Mailed: 3/7/12

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

■ [REDACTED]