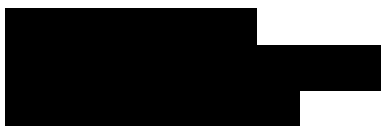


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2011-52523
Issue No: 2009/4031
Case No: [REDACTED]
Hearing Date:
December 13, 2011
Wayne County DHS-31

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 December 13, 2011. Claimant personally appeared and testified.

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 April 13, 2011, Claimant filed an application for MA, Retro-MA, and SDA benefits alleging disability.
- (2) On May 23, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that she had a non-severe and non-exertional impairment and was capable of performing other work, pursuant to 20 CFR 416.920(f). SDA was denied for lack of duration.
- (3) On May 31, 2011, the department caseworker sent Claimant notice that her application was denied.
- (4) On June 21, 2011, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On November 1, 2011, the State Hearing Review Team (SHRT) found Claimant was not disabled. (Department Exhibit B, pages 1-2).
- (6) Claimant has a history of anemia, fibroids, depression, and fatigue.
- (7) On September 20, 2010, Claimant was admitted to the hospital for anemia – acute secondary blood loss and uterine fibroids. She presented with low hemoglobin, dizziness, and lightheadedness. She also reported she has hemorrhoids which bleed intermittently. The onset of low hematocrit was acute. The intensity is moderate. The course is worsening. External hemorrhoids present at anal verge. Guaiac weakly positive. The doctor noted the likely cause of anemia was the uterine fibroids with heavy vaginal bleeding. Claimant received 2 units of blood and was discharged from the hospital on September 21, 2010, able to return to work without restrictions. (Department Exhibit A, pages 10-17).
- (8) On March 26, 2011, Claimant presented to Community Mental Health Services complaining of depression, anemia, sleep disturbance, anxiety, mood swings, over eating and not eating. Psychiatric evaluation scheduled for 4/15/11. (Department Exhibit A, pages 22-26).
- (9) On April 15, 2011, Claimant was evaluated by a psychiatrist. She reported she has been depressed for at least the past three years, but has not sought psychiatric treatment before. She has been drinking alcohol and smoking marijuana and cigarettes for the last ten years. A pack of cigarettes will last her for two days. She last used marijuana yesterday. She worked for Chrysler but she had to quit her job last year because of her medical problems. She has a sullen affect. She was diagnosed with major depressive disorder, recurrent severe without psychotic features, alcohol, cannabis and nicotine dependence. GAF: 55. Claimant was prescribed Celexa and advised to stop using drugs, alcohol and cigarettes and recommended to follow-up as outpatient for medication reviews, psychotherapy, psychoeducation and case management services. (Department Exhibit A, pages 19-21).
- (10) On May 3, 2011, Claimant was examined by a physician on behalf of the department. The physician found Claimant was alert and oriented with a flat affect. Her neurological exam showed she had numbness in her hands and feet and anemia. She was also suffering from depression. (Department Exhibit A, pages 8-9).
- (11) On June 24, 2011, Claimant attended an independent medical examination. She had a history of chronic lower back pain, fibroid uterus, chronic hydrosalpinx, anxiety, depression and alcohol abuse. She was admitted to the hospital from 2/16/07 through 2/22/07 and treated for hydrosalpinx with IV antibiotics for tubo-ovarian infection. She was noted

to have hydrosalpinx and pyosalpinx through CAT scan of abdomen and was treated with antibiotics. She was also treated for this in 2004 per her medical records. She has chronic lower back pain from this condition. The lower back pain is localized with no distal radiation to the lower limbs. She was also diagnosed with multiple fibroids in October 2010 and is in need of surgery. There is a palpable mass in the suprapubic area of the abdomen suggestive of enlarged fibroid. The doctor found that Claimant could work 8 hours a day. She can sit, stand, walk, bend minimally and lift at least 5-10 pounds of weight without difficulty. (Department Exhibit B, pages 3-9).

- (12) At the time of the hearing, Claimant was 33 years old with a [REDACTED] birth date; was 5/6 in height and weighed 205 pounds.
- (13) Claimant is a college graduate with a Master's Degree in Business Administration. Her work history includes working on an assembly line, preparing payroll, a bank teller and a clerk in a government office.
- (14) 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 September 2010. Therefore, she is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of

age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

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

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

In the present case, Claimant alleges disability due to anemia, fibroids, depression, and fatigue.

On September 20, 2010, Claimant was admitted to the hospital for anemia – acute secondary blood loss and uterine fibroids. She received 2 units of blood and was discharged the following day able to return to work without restrictions.

On April 15, 2011, Claimant underwent a psychological evaluation and was diagnosed with major depressive disorder, recurrent severe without psychotic features and alcohol, cannabis and nicotine dependence.

On May 3, 2011, an independent medical exam found Claimant was alert and oriented with a flat affect. Her neurological exam showed she had numbness in her hands and feet from anemia.

On June 4, 2011, the Claimant attended an independent evaluation. According to her medical records, she had been hospitalized and treated for hydrosalpinx and pyosalpinx

in 2004 and 2007. As a result she has chronic lower back pain from this condition. She was also diagnosed with multiple fibroids in October 2010 and needs surgery. There was a palpable mass in the suprapubic area of the abdomen suggestive of a large fibroid. The physician opined that Claimant can sit, stand, walk, bend minimally and lift at least 5-10 pounds of weight without difficulty.

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 disabling impairments due to anemia, fibroids, depression, and fatigue.

Listing 7.00 (hematological disorder) 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, or not 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 on an assembly line, a payroll clerk, and bank teller. In light of Claimant's testimony, and in consideration of the Occupational Code, Claimant's prior work is classified as semi-skilled, light work.

Claimant testified that she is able to walk; can sit for approximately an hour; and can lift/carry about 15 pounds. The medical evidence does not contain any restrictions. 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 current limitations, it is found that Claimant can return to past relevant work (semi-skilled, light), thus Claimant is found not disabled at Step 4 with no further analysis required.

If Step 5 were necessary, 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 33 years old and thus considered to be a younger individual for MA-P purposes. Claimant has a Master's degree in Business Administration. 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 anemia, fibroids, depression, and fatigue. There was no evidence that as a result of the impairment(s), Claimant was unable to perform significant gainful activity. In light of the foregoing, it is found that the 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 light work as defined in 20 CFR 416.967(b). After review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 202.22, it is found that the Claimant is not disabled for purposes of the MA-P program at Step 5.

In this case, the Claimant is found not disabled for purposes of the MA-P program, therefore Claimant is found not disabled for purposes of the SDA program.

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 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: 1/3/12

Date Mailed: 1/3/12

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]