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

IN THE MATTER OF:

[redacted]

Reg. No.: 2012-10069
Issue No.: 2009; 4031
Case No.: [redacted]
Hearing Date: February 8, 2012
County: Grand Traverse

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 February 8, 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 30, 2012, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

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

FINDINGS OF FACT

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

(1) On April 12, 2011, Claimant filed an application for MA, Retro-MA, and SDA benefits alleging disability.

(2) On October 12, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P indicating that she was capable of other work, pursuant to 20 CFR 416.920(f).

(3) On October 26, 2011, the department caseworker sent Claimant notice that her application was denied.

(4) On November 2, 2011, Claimant filed a request for a hearing to contest the department's negative action.

(5) On December 20, 2011 and April 30, 2012, the State Hearing Review Team (SHRT) found Claimant had severe impairments but was not disabled based on Medical Vocational Guideline 201.27. (Department Exhibit B, p 1; Department Exhibit C, p 1).

(6) Claimant has a history of degenerative disc disease, psoriasis, heart attack, psoriatic arthritis, fibromyalgia, kidney stones, nephrostomy, gout, dyslipidemia, neuropathy, and depression.

(7) On December 23, 2003, Claimant underwent an emergent left heart catheterization and coronary artery study which revealed a profoundly abnormal left ventricular function with diffuse inferior and lateral wall hypokinesis. Visually estimated ejection fraction of 35%. High-grade critical stenosis noted in the proximal circumflex coronary artery. 40% stenosis noted in the mid left anterior descending coronary artery. Mild but diffuse atherosclerotic changes noted in the mid right coronary artery. Excellent angiographic results of primary stenting to the proximal circumflex coronary artery. (Department Exhibit A, pp 136-138).

(8) On June 2, 2004, Claimant saw her cardiologist for follow-up of her exercise Cardiolite study done in assessment of the extent of her ischemic heart disease and in part as preoperative assessment prior to possible nephrectomy. Claimant was able to walk on a treadmill for a total of 7 minutes before she stopped secondary to fatigue. She had relatively blunted heart rate response secondary to beta blockade with a peak heart rate achieved of 139, which is 75% of her age predicted maximum. She had no changes on her electrocardiogram to predict ischemia. The Cardiolite component of this study showed no evidence for significant reversible ischemia. She did have a small fixed anteroapical defect consistent with a previous small infarct and she had normal left ventricular function with an ejection fraction of 71%. Based on this information, Claimant is at a low likelihood of ischemic complications during the perioperative interval. (Department Exhibit A, pp 144-145).

(9) On March 11, 2005, Claimant saw her cardiologist for follow-up. The cardiologist opined that Claimant had a known history of coronary artery disease, status post angioplasty and stenting to the left circumflex, previous history of ischemic cardiomyopathy improved on medical therapy, dyslipidemia and ongoing tobacco use, who has complicating

issues of nephrolithiasis with previous nephrostomy and periodontal disease requiring extraction. (Department Exhibit A, pp 146-147).

(10) On September 28, 2006, Claimant's MRI of the lumbar spine revealed degenerative disc disease with mild central annular bulge at L4-L5. (Department Exhibit A, pp 107-108).

(11) On June 30, 2010, Claimant had a 2-D echocardiogram with Doppler and color flow imaging performed revealing a normal left ventricle with an ejection fraction of 59%. She had normal diastolic function and normal pulmonary pressure. She had mild mitral and mild tricuspid regurgitation. She had no mass, pericardial effusion or thrombus. (Department Exhibit A, pp 149-150).

(12) On February 15, 2011, Claimant saw her primary physician complaining of a psoriasis flare up, neck and hip pain. On examination, she had diffuse, erythematous plaques with silvery scales over abdomen, back, arms, legs, buttock, scalp, and ears. Her left arm/elbow and lower extremities had the largest number of plaques. She stated her neck was stiff and painful. Claimant walked with a slight shuffle and guarded neck movements. (Department Exhibit A, pp 234-235).

(13) On March 29, 2011, Claimant underwent a Mental Residual Functional Capacity Assessment showing that in the category of Understanding and Memory she was markedly limited in her ability to remember locations and work-like procedures, to understand and remember moderately detailed instructions and to perform reading, writing, and arithmetic skills on a functional level. Under Sustained Concentration and Persistence, Claimant was markedly limited in her ability to maintain attention and concentration for an extended period of time or to work in coordination with, or proximity to others without being distracted by them. Under Social Interaction, Claimant was markedly limited in her ability to accept instructions and respond appropriately to criticism from supervisors. Under Adaptation, Claimant was markedly limited in her ability to be aware of normal hazards and take appropriate precautions. (Department Exhibit A, pp 65-67).

(14) On April 5, 2011, Claimant underwent an annual clinical assessment. Claimant is diagnosed with Major Depressive Disorder, Recurrent, Moderate. She presents a history of depression that dates to age 19. Her symptoms included depressed mood, irritability, low tolerance for stress, insomnia, impaired memory, impaired concentration, hopelessness, and, at times, fleeting thoughts of suicide. She admits to hearing occasional voices. Sometimes she will hear her name called, and at other times, she will hear conversations. She has acknowledged feeling as though someone is outside her home, and when she looks, no one is there. She

admits that sometimes she will hear a song on the radio, and she thinks the song is trying to tell her something. She is very frustrated with her sleep problems and complains that her mind is constantly going, and she has a hard time falling asleep. She awakens frequently and does not feel rested in the morning. She suffers from depression and anxiety and has numerous physical health problems including chronic pain. (Department Exhibit A, pp 307-312).

(15) On May 4, 2011, Claimant underwent a myocardial scan with spect with lexiscan revealing no evidence for lexiscan-induced reversible myocardial ischemia. There was a small fixed defect distal inferolateral region without significant change from prior Cardiolite stress test in 2007. Ejection fraction was calculated to be 52% compared to 58% on prior exam. (Department Exhibit A, pp 272-273).

(16) On June 21, 2011, Claimant went to the emergency department (ED), complaining of right flank pain that was going into her lower back. She appears intermittently uncomfortable but in no acute distress. Evaluation of her back shows tenderness to palpation through the lower thoracic spine paraspinal areas bilaterally. She does have tenderness with percussion. Renal ultrasound prior to her arrival shows both kidneys to measure 10 cm in length. There is a nonobstructing 6 mm calculus in the mid pole of the right kidney and a slightly septated 2 cm cyst in the left kidney. (Department Exhibit A, pp 211-212, 274).

(17) On August 31, 2011, Claimant underwent a Mental Status Examination on behalf of the department. Claimant alleged disability due to degenerative disc disease, fibromyalgia, psoriatic arthritis, psoriasis, depression, and anxiety. The examining psychologist opined that Claimant reports chronic medical conditions causing pain and mobility issues including degenerative disc disease, psoriatic arthritis, and fibromyalgia. In addition, she is reporting significant stressors including the fact that she is currently living in her parents' garage. She presents with a flat affect and acknowledges social withdrawal, feelings of hopelessness and helplessness, as well as passive suicidal thinking. She is often nervous and restless and reports panic attacks which come on without a clear trigger. She reports a history of dependence on Morphine which she was taking for pain. She took this for several years and noted physical withdrawal symptoms when this was discontinued. She reports that she has not used morphine for a few years. She appears to be having difficulty coping at present with her many stressors. Diagnoses: Axis I: Major Depressive Disorder, recurrent, moderate; Anxiety Disorder; Opioid Dependence in sustained full remission; Axis II: Dependent Personality Traits; Axis III: Deferred to medical provider; Axis IV: Psychosocial stressors are severe including chronic illness with chronic pain,

homelessness, unresolved grief issues; Axis V: GAF=43. Prognosis: Guarded. (Department Exhibit A, pp 175-179).

(18) On September 10, 2011, Claimant underwent an independent medical evaluation on behalf of the department. The examining physician opined that Claimant reports a history of discomfort involving several joints. At this time she did report tenderness with movement in the cervical and lumbar spines. She reports in the past that she was told that she had "two herniated discs in the lumbar spine." Clinically, there was no overt evidence of radiculopathy as there was no asymmetric reflex loss, motor weakness, or sensory loss noted. She was known to walk with a slightly small stepped gait although she was known to walk more normally while leaving the exam site. With respect to the hands, grip strength is well maintained. She was able to pick up a coin, button clothing and open a door with either hand. Claimant also reports a history of psoriasis. At this time there was known to be small plaques involving the extensor surfaces of the knees, elbows, and a few other scatter plaques perhaps encompassing 1% of total body skin area. No secondary skin breakdown was noted. Initiation of medical management might be of benefit. Claimant also reports a history of hypertension. Blood pressures today are known to be in the pre-hypertensive range. There did not appear to be evidence of end organ damage; however, in the face of a history of coronary artery disease, continued medical management would be advised. Claimant reports a history of chest discomfort. By her description, some aspects are suggestive of pectoris, specifically the improvement with sublingual nitroglycerine although the lack of relation to exertion and the length of time of symptoms is quite atypical. The cardiac examination today was not outside normal limits. She apparently has undergone recent treadmill testing. Results of this would be of interest. There appears to be no contraindication to treadmill testing. (Department Exhibit A, pp 169-173).

(19) On September 19, 2011, Claimant's x-ray of her cervical spine showed focal advanced disc space narrowing and mild retrolisthesis noted at the C4-C5 level, similar to prior imaging ion 12/19/10, with milder changes at C5-C6. The x-ray of her thoracic spine revealed mild scoliotic change similar to prior studies. The x-ray also showed moderate mid dorsal disc degeneration which has progressed since 9/3/08. (Department Exhibit A, pp 206-208, 276-277).

(20) On October 7, 2011, Claimant called her therapist and said she did not want to be here anymore. She agreed she has thoughts of suicide but did not have "an exact plan." She did not agree that she could keep herself safe and said, "I don't feel like I want to be in this world." She declined to go to the ER for screening for admission. Claimant's therapist noted that admission would be voluntary, probably not long, and could bring about

rapid improvement in her mood. Claimant said she was not ready to be admitted. She agreed to let her therapist talk to her mother. Claimant's therapist called her mother and her mother was unaware of Claimant's thoughts or call, and said she would try to convince Claimant to go to the ER and would drive her there. Claimant's therapist spoke to Claimant again and Claimant said she might go to the hospital tomorrow. (Department Exhibit A, p 296).

(21) At the time of the hearing, Claimant was 43 years old with a [redacted] birth date; was 5'4" in height and weighed 136 pounds.

(22) Claimant completed a high school equivalent education. Her work history includes floral design and nursing assistant.

(23) 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 the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program 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).

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.

Under the Medicaid (MA) program:

> "Disability" is:
>
> . . . 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.

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 limitations in light of the objective medical evidence presented. 20 CFR 416.929(c)(94).

In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence. 20 CFR 416.929(a). Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone. 20 CFR 416.945(e).

In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you. We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work. 20 CFR 416.929(a).

Since symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, we will carefully consider any other information you may submit about your symptoms. 20 CFR 416.929(c)(3). Because symptoms such as pain, are subjective and difficult to quantify, any symptom-related functional limitations and restrictions which you, your treating or examining physician or psychologist, or other persons report, which can reasonably be accepted as consistent with the objective medical evidence and other evidence, will be taken into account in reaching a conclusion as to whether you are disabled. 20 CFR 416.929(c)(3).

We will consider all of the evidence presented, including information about your prior work record, your statements about your symptoms, evidence submitted by your treating, examining or consulting physician or psychologist, and observations by our employees and other persons. 20 CFR 416.929(c)(3). Your symptoms, including pain, will be determined to diminish your capacity for basic work activities to the extent that your alleged functional limitations and restrictions due to symptoms, such as pain, can reasonably be accepted as consistent with the objective medical evidence and other evidence. 20 CFR 416.929(c)(4).

In Claimant's case, the ongoing 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 November 2010; 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 mental and physical findings, that Claimant cannot return to her past relevant work because the rigors of working as a nursing assistant are completely outside the scope of her mental and physical 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 the claimant has the residual functional capacity for substantial gainful activity.

After careful review of Claimant's extensive 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). The department has failed to provide vocational evidence which establishes that Claimant has the residual functional capacity for substantial gainful activity and that, given Claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which the Claimant could perform despite Claimant's limitations. Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program. Consequently, the department's denial of her April 12, 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 12, 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 May 2013, 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.

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

Date Signed: 5/31/12

Date Mailed: 5/31/12

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