STATE OF MICHIGAN

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



Reg. No.: 2012-52310

Issue No.: 2009

Case No.:

Hearing Date: August 16, 2012

Wayne County DHS (17)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

This matter is before the undersigned Administ rative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant 's request for a hearing. After due notice, an in person hearing was held in Detroit, Mi chigan on August 16, 2012. The Claima nt appeared and testified as did who appeared as a witness for the Claimant. the Claimant's Aut horized Hearing Representative, also appeared.

Representative, also appeared.

Medical Contact Worker, appeared on behalf of the Department of Human Services ("Department").

ISSUE

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

FINDINGS OF FACT

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

- The Claimant submitted an application on October 16, 2011 for public assistance seeking MA-P benefits and retro MA-P benefits (retro to July 2011).
- On January 12, 2012 the Medic al Review Team ("MRT") found the Claim ant not disabled. (Exhibit 1)
- 3. The Department notified the Claimant of the MRT de termination on January 19, 2012.

- 4. On April 16, 2012 the Department received the Claimant's timely written request for hearing.
- 5. On June 28, 2012, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
- 6. An Interim Order was issued on A ugust 20, 2012 and additional evidence was ordered to be obtained by the Department and the Claimant's Authorized Hearing Representative.
- 7. The new evidenc e was s ubmitted to the State Hear ing Review Team for its review on January 17, 2013.
- 8. On March 4, 2013 the State Hearing Review T eam found the Claimant not disabled.
- 9. The Claim ant alleged physical disable ing impairments due to arthritis in both knees and both hands with chronic pain, right sided limp due to open reduce tion and internal fixation of right femur fracture, and COPD.
- 10. The Claimant has not alleged any mental disabling impairment.
- 11. At the time of hearing, the Claimant was years old with a date. The Claimant was 5'0" in height; and Claimant weighed 120 pounds.
- 12. The Claimant has a high school educ ation and at tended special ed ucation classes throughout school. The Claimant's reading and writin g is not good and Claimant cannot multiply. The Claimant's employment history included working as a factory worker placing pills in boxes, standing most of the day. The Claimant also worked full time for a plastic company putting plastic milk jugs in bins after inspecting them and was standing all day and was required to climb stairs.
- 13. The Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

The Medical Assistance program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services, formerly known as the Family Independence Agency, pursuant to MCL 400.10 *et seq* and MCL 400.105. Department polic ies are found in the Bridge's Administrative Manual ("BAM"), the Bridges Elig ibility Manual ("BEM"), and the Bridges Reference Tables ("RFT").

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental im pairment which can be expected to result in death or which has lasted or can be expect ed to last for a continuous period of not less than 12 months. 20 CF R 416.905(a). The person claiming a physical or mental disability has the burden to esta blish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinica l/laboratory findings, diagnosis/prescri bed treatment, prognosis for recovery and/or medical assessment of ability to do work-relate activities o r ability to reason a nd make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 413.913. An individual's subjective pain com plaints ar e not, in and of themselves, sufficient to establish disab ility. 20 CF R 416.908; 2 0 CFR 4 16.929(a). Similarly, conclusor y statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927

When determining disability, 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 applicants 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 cons ider an individual's current work activit y; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to det ermine whether an individual can perform past relev ant work; and residual functional capacity along with vocational factors (i .e. age, education, and work experienc e) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disable ed, or not disabled, at particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an indi vidual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual f unctional c apacity is the most an indi vidual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) A n individual's residual functional capacity assessment is evaluat ed at both steps four and five. 20 CF 416.920(a)(4) In determining disability, an i ndividual's functional capacity to perform basic work activities is evaluated and if found that the individ ual h as the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv)

In general, the indiv idual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not signific antly limit an in dividual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done (or intended) for pay or profit. 20 CFR 416.910(a)(b) Substantial gainful activity is work activity that is both substantial and gainful. 20 CFR 416.972 Work may be substantial even if it is done on a part-time basis or if an individual does less, with less responsibility, and gets paid less than prior employment. 20 CFR 416.972(a) Gainful work activity is work activity that is done for pay or profit. 20 CFR 416.972(b)

As outlined above, the first step looks at the i ndividual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity; therefore is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impa irment(s) is considered under St ep 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purpos es, the impairment must be seevere. 20 CFR 916. 920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significes antly 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 f unctions s uch as walking, standing, s itting, 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 s econd step allows for dismiss al of a dis ability claim obvious ly lacking in medical m erit. Higgs v Bo wen, 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, regar dless 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)

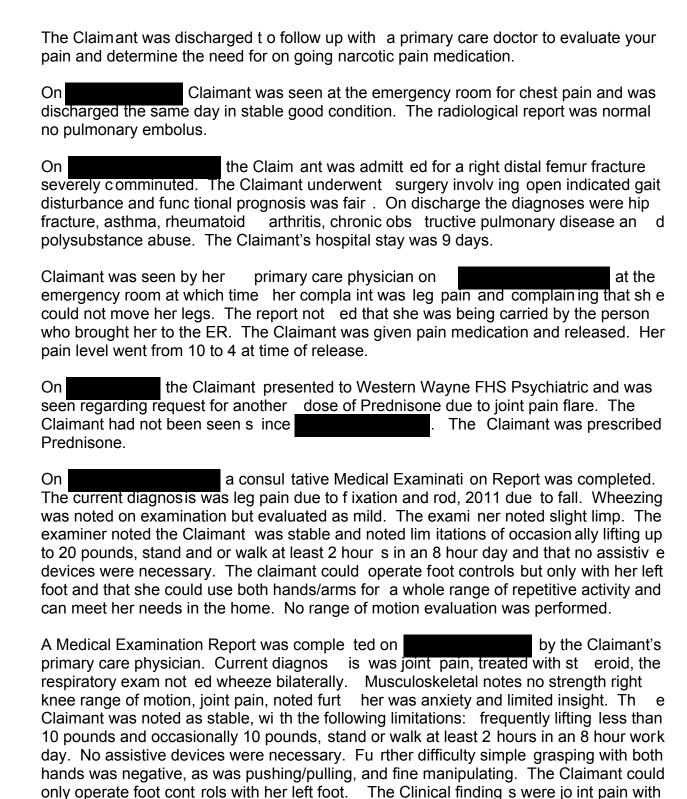
The Claimant alleges physical disabling im pairments due to arthritis in both knees and both hands with chronic pain, right sided limp due to open reduction and internal fixation of right femur fracture, and COPD.

A synopsis and review of the medical evidence of record follows.

On Claimant was seen at ER for knee, hands and hip pain. The examiner noted swelling and the clinic al impression was inflammatory arthritis. The examiner noted enlarged joints in hands visible. The claimant was discharged one day later with pain medication.

On Claimant was seen at the ER and compolained of left and right forearm pain. The impression by the ER physician was polysubstance abuse with dermatitis and urinary tract infection. The Claimant tested positive for opiates. Exhibit 1 pp 61.

On the Claimant presented to the emergency room complaining of pain all over and that s he had run out of pain medications. She denied use of recreational drugs. On examination the Claimant could move all extremities without difficulty. Range of motion was intact to affected areas. Claimant received no treatment in triage.



exam, no radiopathic studies were avail able, and no past medical records were available. Mental limitations of comp rehension a nd sustained concentration were noted.

As previously noted, the Claim ant bears t he burden to present sufficient objective medical evidence to s ubstantiate the alleged disabling impairment(s). As summarized above, the Claimant has presen ted some objective medical evidence establishing that she does have some physical and mental limitations on her ability to perform basic work activities. Accordingly, 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 last ed continuously for t welve months, therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the seque ntial an alysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or co mbination of impairm ents, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant alleges physical disabling impairments due to arthritis in both knees and both hands with chronic pain, right sided limp due to open reduction and internal fixation of right femur fracture, and COPD.

Listing 14.09 Inflammatory Arthritis was cons idered in conjunction with the definition found on 1.00B2c with regard to inability to perform gross move ments effectively. This Section provides: c. What we mean by inability to perform fine and gross movements effectively. Inability to perform fine and gross movements effectively means an extreme tremities; i.e., an impairment (s) that interferes very loss of function of both upper ex ability to independently initia seriously with the individual's te, sustain, or complete e ffectively, individuals must be capable o activities. To use their upper extremities sustaining such functions as reaching, pus hing, pulling, grasping, and fingering to be able to carry out activities of daily living. Therefore, examples of inability to perform fine and gross movements effectively include, but are not limited to, the inability to prepare a simple meal and feed oneself, the inability to take care of personal hygiene, the inability to sort and hand le papers or file s, and the inab ility to place file s in a file c abinet at or above waist level.

Ultimately based upon the medical assessment evidence, it is determined that while the Claimant was deemed limited in her ability to perform functions with her hands and left foot, based upon the t reating physician's evaluation specifically referenced above, it is determined that the Listing 14.09 was not met.

The fourth step in analyzing a dis ability claim requires an assess ment of the claimant's residual functional capacity (RFC) and past re—levant employment. 416.920(a)(4)(iv). An individual is not disabled if he/s—he can perform past relevant work. *Id.*; 20 CF R 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantia—I gainful activity and that—lasted long enough for the

individual to learn the posit ion. 20 CF R 416.960(b)(1). Vocational fact ors of age, education, and work experience, and whet her the past relevant employment exists in significant numbers in the national economy are not considered. 20 CFR 416.960(b)(3). RFC is as sessed based on impairment(s) and any r elated symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are c lassified as sedentary, light, medium, heavy, and very heavy. 2 0 CFR 416.967.

Sedentary work involves lifting of no more t han 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 we ight 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 all so 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 involv es 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 r equirements, e.g., si tting, standing, walking, lifting, carrying, pushing, or pulling) are consider ed nonexertional. 20 CFR 416.969a(a). In

considering whether an individual can perform past relevant work, a comparis on of the individual's residual functional capacity to the demands of past relevant work must be made. Id. If an individual can no longer do past relevant work, the same residua | 1 functional capacity assessment along wit h an individual's age, education, and work experience is considered to determine whethher an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exer tional limitations or restrictions include difficulty function due to nervousness, anxious ness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficult y 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 41 6.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional as pects of work-related activities, the rules in Appendix 2 do not direct factual conclus ions of dis abled 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 considerati on to the rules for specific cas e situations in Appendix 2. Id.

The Claimant's prior work hist ory included working as a fact ory worker placing pills in boxes, standing most of the day. The Claim ant also worked full time for a plastic company putting plastic milk jugs in bins a fter inspecting them and was standing all day and was required to climb stairs.

In light of the Claimant's testimony and records, and in consideration of the Occupational Code, the Claimant's prior work is classified as unskilled, light work.

The Claimant credibly testified that she is not able to walk any significant distance (one block on a good day and not at all due to pain on a bad day). Claimant credibly testified that she uses a walker when at home and a cane. She can stand 3 to 5 minutes due to pain and sit 30 to 45 minutes and that these abilities are limited due to pain and leg pain from her previous broken hip. The Claimant needs as sistance tying her shoes and can squat only partially and bending is difficult. The claimant's pain was described as a 7 with medications and a level 10 without medication. The Claimant indicated that due to arthritis in her hands she cannot pick up a quart of milk and cannot cut meat on her plate. She can hold a coffee cup occasionally but sometimes drops the cup. Due in part to obesity and the conditions of her knees, the Claimant cannot squat, cannot tie her shoes and cannot touch her toes.

The objective medical evidence consisting of evaluations by Claimant's treating primary care physician has determined on examination that the Claimant's physical restrictions and limitations dos ignificantly limit the Claimant. Further at Claimant's treating physician's most recent evaluation the Claimant was noted as stable, with the following

limitations: frequently lifting less than 10 pounds and oc casionally 10 pounds, stand or walk at least 2 hours in an 8 hour work day. No as sistive devices were necessary. Further, Claimant's doctor not ed limitations with sim ple grasping with both hands, a s well as pushing/pulling, and fi ne manipulating. The Claimant could only operate foot controls with her left foot. The clinical findings were joint pain with exam, no radiopathic studies were available, and no past medical records were available. Ment al limitations of comprehension and sustained concentration were noted. This doctor has seen claimant since 2009.

If the impairment or combination of impairment s does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920. In consider ation of the Claimant 's testimony, medical records, and current limitations, it is found that the Claimant is not able to return to past relevant work which is c onsidered light work due to the standing/walking requirements of her past relevant work as she would not be able to perform her position as a factory worker packing pills or inspecting milk containers due to the limitations imposed on standing and restrictions on lifting and carrying.

In Step 5, an assessment of the individua I's residual functional capace ity and age, education, and work experience is consider ed to determine whet her an adjustment to other work can be m ade. 20 CFR 416.920(4)(v). The Clai mant is 52 ye ars old and, thus, is considered to be closely approaching advanced age for MA purposes. The Claimant is a high sc hool graduate but attended special educat ion classes and some limitations with reading and writing. 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 pr oof that the Claimant has t he residual capacity to substantial gainful employ ment. 20 CFR 416.960(2); Richardson v Sec of H ealth and Human Services, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is no required, a finding supported by substantial evidence that the individual has th е vocational qualifications to perform specif ic jobs is needed to meet the burden. , 587 F2d 321, 323 (CA 6, 1978). O'Banner v Sec of Health and Human Services Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. Heckler v Campbell, 461 US 458, 467 (1983); Kirk v Secretary, 667 F2d 524. 529 (CA 6, 1981) cert den 461 US 957 (1983).

In this case the medical evidence reveals that the Claimant's medical conditions include physical disabling impairments including arthritis, with chronic pain in her knees, hands elbows and legs, and walks with a limp due to a serious broken femur. The evaluations and medical opinions of a "treating "physic ian is "controlling" if it is well-supported by medically acceptable clinical and labor atory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record. 20 CFR§

404.1527(d)(2), Deference was given by the under signed to the multiple ER visits due to chronic pain, and the observations and opinions of the Claimant's treating physician.

The object ive medic allev idence provided by the Claimant's to reating primary care physician and in consideration of several hospital admissions which medically support Claimant's condition place the Claimant at the sedentary activity level. The total impact caused by the combination of medical problems suffered by the Claimant must be considered. In so doing, it is found that the Claimant's physical impairments have a major effect on her ability to perform basic work activities. In light of the foregoing, it is found that the Claimant maintains the residual functional capacity for work activities on a regular and continuing bas is including the ability to meet the physical and mental demands required to perform sedentary work as defined in 20 CFR 416.967(a). After review of the entire record and using the Miedical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.12, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

It is found that the Claimant is disabled for purposes of the MA-P program at Step 5. As the record is unclear whether this appeal also involved State Dis ability Assistance (SDA), no finding is m ade in that regard and the Department shall determine if SDA is applicable and was part of the application dated October 26, 2011 and the Department's notice of case action dated January 19, 2012.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant disabled for purposes of the MA-P.

Accordingly, It is ORDERED:

- 1. The decision of the Department is REVERSED.
- The Department is ordered to initiate processing of the Claimant 's MA-P, and Retro MA-P(July 2011) application dated October 16, 2011 and award required benefits, provided Claimant meets all non-medical eligibility requirements.
- 3. The Department is al so ordered as part of its obligation to process the Claimaint's application for MA-P to determine if the application dated October 26, 2011 c ontained an application for SDA and shall process the application accordingly and advise the Claimant regarding its determination in accordance with Department policy.

4. The Department shall initiate review of the Claimant's disability case in March 2014 in accordance with Department policy.

Lynn M. Ferris
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: March 28, 2013

Date Mailed: March 28, 2013

NOTICE: Michigan Administrative Hearing Syst em (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a par ty within 30 days of the mailing date of this Dec ision and Order. MAHS will not order a rehearing or reconsideration on the Department's mo tion where the final decis ion cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases).

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a ti mely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing <u>MAY</u> be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail to:

Michigan Administrative hearings

Re consideration/Rehearing Request

P. O. Box 30639

Lansing, Michigan 48909-07322

LMF/cl

