

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-57337
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: September 17, 2012
County: Wayne (82-49)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan, on Monday, September 17, 2012. The Claimant appeared, along with [REDACTED] and testified. Participating on behalf of the Department of Human Services ("Department") was [REDACTED]

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefit programs?

FINDINGS OF FACT

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

1. The Claimant submitted an application for public assistance seeking MA-P and SDA benefits on April 20, 2012.
2. On May 16, 2012, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 1, 2)
3. On May 22, 2012, the Department notified the Claimant of the MRT determination.
4. On June 5, 2012, the Department received the Claimant's written request for hearing.

5. On July 13, 2012, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 6)
6. The Claimant alleged physical disabling impairments due to neck pain, back pain with radiculopathy, and vertigo.
7. The Claimant alleged mental disabling impairments due to depression.
8. At the time of hearing, the Claimant was 40 years old with a [REDACTED] birth date; was 5’2” in height; and weighed 180 pounds.
9. The Claimant is a high school graduate with an employment history as a Pharmacy Technician.
10. 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 policies are found in the Bridges Administrative Manual (“BAM”), the Bridges Eligibility 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 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 416.913. 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 ("RFC") to determine whether an individual can perform past relevant work; and RFC along with vocational factors (i.e., 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 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 three to step four. 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 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 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).

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a). First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1). When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2). Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace;

and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3). The degree of limitation for the first three functional areas is rated by a five-point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). A four-point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d). If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR 416.920a(d)(2). If the severe mental impairment does not meet (or equal) a listed impairment, an individual's RFC is assessed. 20 CFR 416.920a(d)(3).

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 is, therefore, not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 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 purposes, the impairment must be severe. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(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 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(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, the Claimant alleges disability due to neck pain, back pain with radiculopathy, vertigo, and depression.

On [REDACTED], an initial psychiatric evaluation was performed. The diagnosis was major depressive disorder, recurrent, moderate with a Global Assessment Functioning ("GAF") of 60.

On [REDACTED] the Claimant attended a medication review where she was diagnosed with major depressive disorder, recurrent, moderate. The Claimant's mental state was stable and her medication was continued.

On [REDACTED], the Claimant attended a medication review where she was found to be in stable condition with the primary diagnosis of major depressive disorder, recurrent, moderate.

On [REDACTED], A diagnostic ankle/brachial index ("ABI") and toe brachia index ("TBI") revealed a ABI on the right of .75 (mild) with a TBI of .74 (moderate) and a .99 ABI on the right (normal) and a .79 TBI on the right (mild)

On [REDACTED], the Claimant attended a follow-up appointment with complaints of bilateral lower extremity pain and vague numbness. A recent bilateral renal angiogram [REDACTED] was essentially negative. The impressions were hypothyroidism, hypertension, mild obesity, atypical chest pain, and probable stress-induced headaches.

On [REDACTED] a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were depression, chronic pain, hypertension, obesity, allergies, and hypothyroidism. The physical examination revealed, in part, pain, anxiety, obesity, and depressed mood. The Claimant was in stable condition with the risk of deterioration. The Claimant was able to occasionally lift/carry 10 pounds with frequently lifting/carrying of less than 10 pounds; standing and/or walking less than 2 hours in an 8-hour workday; sitting less than 6 hours during this same time frame; and able to perform simple grasping, reaching, pushing, and pulling with her upper extremities. The Claimant was unable to do fine manipulation or operate foot/leg controls. The Claimant was found unable to meet her needs in the home.

On [REDACTED] a MRI of the cervical spine revealed severe spinal canal stenosis and left neural foraminal narrowing secondary to a large disc protrusion at C6-7. The

findings were suggestive of an eroding osseous fragment off the posterior aspect of the C7 vertebral body.

On this same date, an MRI of the lumbar spine revealed focal left foraminal disc bulge at L3-4 with mild left foraminal narrowing without evidence of spinal canal stenosis.

On [REDACTED] the Claimant attended a medication review appointment. The diagnosis was major depressive disorder, recurrent, moderate. The Claimant's mental state was stable and her medication was renewed.

On this same date, a Mental Residual Functional Capacity Assessment was completed on behalf of the Claimant. The Claimant was markedly limited in 7 of the 20 factors and moderately limited in 12 factors.

The Psychiatric/Psychological Examination Report was also completed on this same date. The diagnosis was major depressive disorder, recurrent, moderate with a GAF of 60.

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 medical evidence establishing that she does have some physical and mental 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 Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms treatment/diagnoses of major depressive disorder (recurrent, moderate), hypothyroidism, hypertension, obesity, atypical chest pain, chronic pain, anxiety, severe spinal canal stenosis and left neural foraminal narrowing secondary to a large disc protrusion at C6-7; neuropathy, radiculopathy, and focal left foraminal disc bulge at L3-4 with mild left foraminal narrowing.

Listing 1.00 (musculoskeletal system), Listing 4.00 (cardiovascular system), and Listing 12.00 (mental disorders) were considered in light of the objective medical evidence. The evidence confirms severe spinal stenosis; however, the Claimant is able to perform simple grasping, reaching, pushing, and pulling. The Claimant is unable to perform fine manipulation or operate foot/leg controls. Although MRI results reveal disc bulge at L3-4, there were no objective findings showing the Claimant is unable to ambulate effectively. The evidence does not show persistent, recurrent, and/or uncontrolled (while on prescribed treatment) cardiovascular impairment or end organ damage resulting from the Claimant's hypertension. Mentally, there was documentation of moderate and marked limitations; however, these records do not show that mentally the

Claimant is unable to initiate, sustain, or complete activities of daily living, social functioning, or reveal repeated episodes of decompensation. The objective medical records establish physical and mental impairments; however, these records do not meet the intent and severity requirements of a listing, or its equivalent. Accordingly, the Claimant cannot be found disabled, or not disabled at Step 3; therefore, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

Before considering the fourth step in the sequential analysis, a determination of the individual's RFC is made. 20 CFR 416.945. An individual's RFC is the most he/she can still do on a sustained basis despite the limitations from the impairment(s). *Id.* The total limiting effects of all the impairments, to include those that are not severe, are considered. 20 CFR 416.945(e).

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 additionally 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, i.e., 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 RFC with the demands of past relevant work. *Id.* If an individual can no longer do past relevant work, the same RFC assessment along with an individual's age, education, and work experience are 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 to function 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 (i.e., 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.*

In this case, the evidence confirms treatment/diagnoses of major depressive disorder (recurrent, moderate), hypothyroidism, hypertension, obesity, atypical chest pain, chronic pain, anxiety, severe spinal canal stenosis neuropathy, radiculopathy, and left neural foraminal narrowing secondary to a large disc protrusion at C6-7; and focal left foraminal disc bulge at L3-4 with mild left foraminal narrowing. The Claimant testified that she is able to walk short distances; grip/grasp with difficulties; sit for less than 2 hours; lift/carry less than 10 pounds; stand short periods of time; and has difficulties bending and is unable to squat. The objective medical evidence found the Claimant in stable condition mentally but restricted to less than sedentary activity. After review of the entire record and considering the Claimant's testimony, it is found, at this point based on the combination of physical and mental impairments, the Claimant is unable to meet the demands necessary to perform sedentary work as defined by 20 CFR 416.967(a).

The fourth step in analyzing a disability claim requires an assessment of the Claimant's 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).

The Claimant's prior employment was as a pharmacy technician. In consideration of the Claimant's testimony and Occupational Code, the prior employment is classified as semi-skilled, light to medium work. If the impairment or combination of impairments 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. As noted above, the objective evidence contains both physical and mental limitations that would preclude the Claimant from performing past relevant work. Accordingly, the Claimant cannot be found disabled, or not disabled, at Step 4.

In Step 5, an assessment of the Claimant's RFC 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 40 years old and, thus, considered to be a younger individual for MA-P purposes. The Claimant is a high school graduate. 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).

In this case, the evidence confirms treatment/diagnoses of major depressive disorder (recurrent, moderate), hypothyroidism, hypertension, obesity, atypical chest pain, chronic pain, anxiety, severe spinal canal stenosis neuropathy, radiculopathy, and left neural foraminal narrowing secondary to a large disc protrusion at C6-7; and focal left foraminal disc bulge at L3-4 with mild left foraminal narrowing. The Claimant testified that she was able to perform activity at the less than sedentary level. The objective medical evidence placed the Claimant at less than sedentary activity and showed several marked limitations mentally. In light of the foregoing, it is found that, at this point, due to the combination of physical and mental impairments/limitations, the Claimant is unable to meet the requirements necessary to perform even sedentary work as defined in 20 CFR 416.967(a). Accordingly, the Claimant is found disabled at Step 5.

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

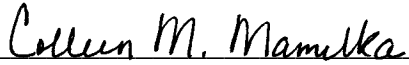
In this case, the Claimant is found disabled for purposes of the MA-P program; therefore, she is found disabled for purposes of SDA benefit program.

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 and SDA benefit programs.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate processing of the April 20, 2012, application, to include any requested retroactive months, to determine if all other non-medical criteria are met and inform the Claimant of the determination in accordance with Department policy.
3. The Department shall supplement for any lost lost benefits (if any) that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.
4. The Department shall review the Claimant's continued eligibility in accordance with Department policy in November 2013.



Colleen M. Mamelka
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: October 9, 2012

Date Mailed: October 9, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (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 timely 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 **MAY** 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 at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CMM/pf

cc:

