

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-58745
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: September 20, 2012
Oakland County DHS (03)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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, an in person hearing was held in Walled Lake, Michigan on September 20, 2012. The Claimant appeared and testified. [REDACTED], a witness, also appeared on behalf of the claimant. [REDACTED] the Claimant's Authorized Hearing Representative, also appeared. [REDACTED], ES, appeared on behalf of the Department of Human Services ("Department").

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") and retro MA-P 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 on April 19, 2012 for public assistance seeking MA-P benefits and retro MA-P (March 2012).
2. On May 4, 2012 the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1)
3. The Department notified the Claimant of the MRT determination on May 11, 2012.

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4. On June 1, 2012 the Department received the Claimant's timely written request for hearing.
5. On July 24, 2012, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued on September 26, 2012 and additional evidence was ordered to be obtained and submitted.
7. The new evidence was submitted to the State Hearing Review Team for its review on December 11, 2012.
8. On January 30, 2013 the State Hearing Review Team found the Claimant not disabled.
9. The Claimant alleged mental disabling impairments due to depression and anxiety.
10. The Claimant alleged physical disabling impairments due to bilateral knee pain, chronic pain syndrome, cellulitis, venous insufficiency and arthritis.
11. At the time of hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth date,
12. The Claimant was 5'11" in height; and weighed 190 pounds.
13. The Claimant has the equivalent of a high school education with a year and a half of college with a completion of a certificate in computer bookkeeping. Claimant has an employment history working as a bookkeeper and as an Assistant Vice President for mortgage banking company in a supervisory capacity in receivables.
14. 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 to determine whether an individual can perform past relevant work; and residual functional capacity 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 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.945

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) 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)

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 is 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 residual functional capacity 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; therefore, is 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 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 the Claimant has alleged physical disabling impairments due to bilateral knee pain post bilateral knee replacement, chronic pain syndrome, cellulitis,

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venous insufficiency and arthritis. The Claimant also alleges mental disabling impairment due to depressions and anxiety.

A summary of the medical evidence presented follows.

On [REDACTED] a consultative examination was conducted. The examiner found in its conclusions that the Claimant said she cannot stand longer than 30 minutes, cannot sit longer than 30 minutes or walk longer than 30 minutes, go up or downstairs and cannot squat without significant pain. Her current medications provide minimal relief.

A Psychiatric/Psychological Medical Examination Report was conducted on [REDACTED]. The examiner observed that the Claimant's gait was clumsy, awkward and painful. The diagnosis was generalized anxiety disorder with symptoms of panic disorder, pain disorder associated with both psychological factors and general medical condition, adjustment disorder with depressed mood. GAF score was 60. Prognosis: the examiner gave the opinion that intellectual functioning is at least average and that Claimant is capable of understanding simple and complex instructions and completing simple and complex tasks. Her prognosis is primarily dependent upon the status of her knee replacements and concomitant physical problems associated with it. She has become depressed and highly anxious in response to her inability to continue working and maintain her independence.

A Medical Examination Report was prepared on [REDACTED] by a treating physician treating Claimant for pain management. The treating physician had seen Claimant many times over the years. The Diagnosis was intractable knee pain bilateral knee Cellulites right leg, anxiety, depression, insomnia, memory loss and vitamin A and D deficiency. The examination notes observed bilateral leg swelling, right leg inflamed, significant bruising antalgic gait without cane. The Report noted that the Claimant was deteriorating, and imposed the following limitations: only occasionally lifting 10 pounds or less, stand or walk less than 2 hours in an 8 hour work day. No use of hands/arms for repetitive actions. The clinical findings relied upon and supporting the opinion of the examiner were leg swelling painful range of motion, infection cellulites right leg. No mental limitations were imposed.

On [REDACTED] a Medical Examination report by a treating physician, Internal Medicine notes bariatric surgery, venous insufficiency, cellulitis lower extremities. The examiner noted improving but imposed limitations of no lifting, standing and or walk less than 2 hours in a 6 hour work day, no operating foot leg controls, and that Claimant was capable of simple grasping, reaching, pushing, pulling and fine manipulating. The report noted no mental limitations.

The Claimant was admitted for a three day hospital stay due to right leg lower extremity cellulitis. The Claimant was given antibiotics for infection and improved due to antibiotic

therapy and leg elevation. On discharge Claimant was directed to keep her legs elevated. The impressions were chronic venous insufficiency, cellulitis of right lower extremity and anemia.

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 objective medical evidence establishing that he does have some physical and mental limitations on his 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 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 Claimant asserts mental disabling impairments and physical disabling impairments previously listed above.

Listing 12.04 (A), (B) Mental Affective Disorders and 12.06 Anxiety Related Disorders were considered and it was determined based upon the objective medical evidence that the Claimant did not meet either of these listings. Likewise Listing 14.09 Inflammatory Arthritis and Listing 1.02 major dysfunction of joint(s) due to any cause were considered and based upon the objective medical evidence the Claimant's condition did not meet the listing as the medical records did not demonstrate persistent inflammation or deformity.

The fourth step in analyzing a disability claim requires an assessment of the claimant's 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 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 (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.*

The Claimant's prior work history consists of employment performing accounting-related functions for the financial industry, including collecting receivables, and also performed supervisory functions for a staff of 5 reviewing receivables. In light of the Claimant's testimony and records, and in consideration of the Occupational Code, the Claimant's prior work is classified as semi-skilled, sedentary work.

The Claimant credibly testified that she is unable to sit or stand for more than 30 minutes and cannot bend at the knees, stoop, kneel or walk further than 2 blocks. The Claimant needs assistance with balance in order to dress herself when putting on slacks. Her legs constantly swell unless elevated. The Claimant, due to chronic pain, takes Methadone, Oxycodone, and for her depression and anxiety Alprazolam (Xanax) and Paxil.

Her prior jobs although sedentary for the most part required that the Claimant be alert and attentive at a computer much of the day. The Claimant credibly testified that her concentration is no longer at the level where she could do detailed number entry for much of the day and she has limited use of her hands and arms due to numbness. The Claimant indicated that she could not perform her prior work because she can no longer sit or stand more than 30 minutes and cannot walk any significant distance (1/2 to one block) due to joint pain and cannot squat or kneel due to knee pain. The Claimant described her pain as a level 6-7 even with the strong pain medication that she takes daily. The objective medical evidence consisting of evaluations by Claimant's treating internal medicine physician and the Claimant's pain management physician both placed significant restrictions and limitations which significantly limit the Claimant as set forth in the medical summary earlier in this Decision. It is noted that the consultative exam performed [REDACTED] cited earlier on this decision was of little use and was not considered as no medical conclusions were provided by the examiner other than to restate the Claimant's description of her condition in the examiner's conclusions. Based upon these evaluations, it is determined that the Claimant's semi-skilled work can no longer be performed by her and her skills are non-transferable.

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. In consideration 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; thus, the fifth step in the sequential analysis is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). The Claimant is 51 years old and, thus, is considered to be an individual closely approaching advanced age for MA purposes. The Claimant is a high school graduate with a certificate for computer accounting. 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 II*, 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 reveals that the Claimant's medical conditions resulting from her bilateral knee pain, chronic pain syndrome, cellulitis, venous insufficiency and arthritis, depression in combination, significantly limit her physical and emotional functioning. The evaluations of the treating physician under 20 CFR § 404.1527(d)(2), the medical conclusion of a "treating" physician is "controlling" if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record. Deference was given to the tests and observations of the Claimant's treating physician(s).

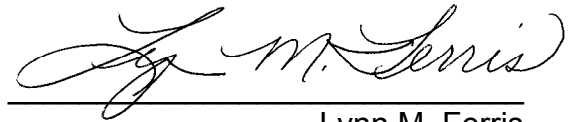
The objective medical evidence provided by the Claimant's treating primary care physician and internal medicine physician place the Claimant at the less than sedentary activity level. The total impact caused by the physical impairment suffered by the Claimant and depression must be considered. In doing so, it is found that the combination of the Claimant's physical impairments have a major impact on her ability to perform basic work activities. Accordingly, it is found that the Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a). After review of the entire record, and in consideration of the Claimant's age, education, work experience and residual functional capacity it is found that the Claimant is disabled for purposes of the MA-P program at Step 5 with no further analysis required.

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:

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1. The Department's determination is REVERSED.
2. The Department shall initiate processing of the April 19, 2012 MA-P application and retro application (March 2012) 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 review the Claimant's continued eligibility in February 2014 in accordance with Department policy.



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

Date Signed: February 27, 2013

Date Mailed: February 27, 2013

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.

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

Michigan Administrative Hearings
Re consideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

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cc:

