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

IN THE MATTER OF:

[redacted]

Reg No.: 2012-62432
Issue No.: 2009
Case No.: [redacted]
Hearing Date: September 13, 2012
Macomb County DHS (12)

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 hearing was held in Clinton Township, Michigan on Thursday, September 13, 2012. The Claimant appeared and testified. The Claimant was represented by [redacted]. Participating on behalf of the Department of Human Services ("Department") was [redacted].

During the hearing, the Claimant waived the time period for the issuance of this decision, in order to allow for the submission of additional medical evidence. The records were received, reviewed, and forwarded to the State Hearing Review Team ('SHRT") for consideration. On February 20, 2012, this office received the SHRT determination which found the Claimant not disabled. This matter is now before the undersigned for a final decision.

ISSUE

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

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 benefits, retroactive to April 2011, on June 23, 2011.

2. On August 30, 2011, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 34, 35)

3. On September 7, 2011, the Department notified the Claimant of the MRT determination.

4. On December 5, 2011, the Department received the Claimant's written request for hearing.

5. On August 9, 2012 and February 14, 2013, the SHRT found the Claimant not disabled.

6. The Claimant alleged physical disabling impairments due to femoral neuropathy, neck pain, chronic obstructive pulmonary disease ("COPD"), diabetes with seizures, ankle pain, urinary incontinence, fatigue, low blood sugar, restless leg syndrome, and abdominal pain.

7. The Claimant alleged mental disabling impairments due to bipolar disorder and depression.

8. At the time of hearing, the Claimant was 48 years old with a [redacted] birth date; was 5' in height; and weighed 160 pounds.

9. The Claimant has a limited education with an employment history in janitorial maintenance and as a private security officer.

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 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 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 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 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 femoral neuropathy, neck pain, chronic obstructive pulmonary disease ("COPD"), diabetes with seizures, ankle pain, urinary incontinence, fatigue, low blood sugar, restless leg syndrome, abdominal pain, bipolar disorder, and depression.

In support of her claim, undated medical records were submitted which document treatment/diagnoses of hypoglycemia and severe pain. Additional records from 2009 and 2010 establish treatment/diagnoses of congestion, acute seizures, seizure disorder, hypertension, wheezing, depression, insulin dependent diabetes, brittle diabetes, back pain, insomnia, hand pain, high cholesterol, hypothyroidism, chronic bilateral knee pain, alcohol dependence, hypertensive cardiovascular disease, and urinary tract infections. In September and October of 2009, the Claimant's condition was deteriorating noting the need for assistance with shopping, meals, and housekeeping.

On January 22, 2011, the Claimant presented to the hospital after falling on ice and hitting her head. The Claimant also stated she had a seizure. The Claimant was treated and discharged with the diagnosed with blunt head trauma, scalp laceration, and seizure activity.

On January 31, 2011, the Claimant was treated/diagnosed with insulin dependent diabetes mellitus, hypertension, incontinence, and seizures.

On March 28, 2011, the Claimant was treated for headaches and leg pain. The physical examination was positive for joint and back pain. The diagnoses were diabetes and hypertension.

On April 18, 2011, the Claimant presented to the hospital via ambulance after having a seizure. Imaging studies were virtually unremarkable. The Claimant was treated and discharged on April 25th with the diagnoses of mental status changes secondary to hypoglycemia (resolved), diabetes mellitus type 1, constipation, urinary tract infection, and COPD.

On April 24, 2011, the Claimant presented to the hospital with complaints of abdominal distension, bloating, and constipation secondary to shortness of breath, weakness, and hypoglycemia. The diagnoses were chronic constipation, intermittent abdominal pain, insulin-dependent diabetes mellitus, hypothyroidism, depression, anxiety, peripheral neuropathy, urinary incontinence, bipolar disorder, hypertension, history of seizures, and dyslipidemia.

On May 6, 2011, the Claimant was treated for joint and back pain, headache, depression, and anxiety.

On May 12, 2011, a mental status examination resulted in the diagnoses of alcohol abuse and bipolar disorder. The Global Assessment Functioning (“GAF”) was 45.

On June 6, 2011, the Claimant attended a follow-up appointment after breaking her ankle the previous week.

On June 15, 2011, the Claimant presented to the emergency room with complaints of left ankle pain. X-rays confirmed a fracture of the distal fibula.

On June 22, 2011, the Claimant attended a follow-up appointment for her left ankle fracture. The cast was removed and new one was put on. The Claimant was to remain non-weight bearing.

On July 11, 2011, the Claimant was treated for/diagnosed with brittle diabetes, incontinence, seizures, and hypertension.

On July 13, 2011, the Claimant attended a follow-up appointment to remove her cast. X-rays showed a healing left ankle fracture. The Claimant was to remaining non-weight bearing and was prescribed a cam walker boot.

On August 1, 2011, the Claimant attended an appointment. The physical examination documented reduced range of motion, fatigue, and pain. The Claimant required a walker for ambulation. The diagnoses were diabetes type II (uncontrolled) and fracture.

On August 24, 2011, the Claimant attended a follow-up appointment for her ankle fracture. X-rays revealed partial healing. The diagnoses were left ankle fracture and diabetes mellitus.

On August 29th, the Claimant was treated/diagnosed with insulin dependent diabetes, hypothyroidism, and depression. Joint pain was noted as well as the need for a cane for ambulation.

On October 5, 2011, the Claimant attended a follow-up appointment for a recheck of her left ankle which she suffered a lateral malleolus fracture on May 30, 2011. X-rays confirmed a delayed union of the fracture.

On November 16, 2011, the Claimant presented to the emergency room via ambulance after being found unresponsive with low blood sugar. The Claimant was treated and discharged with the diagnoses of acute hypoglycemic reaction, insulin-dependent diabetes, leukocytosis secondary to stress reaction, and tobacco abuse.

On December 7, 2011, the Claimant presented to the hospital via ambulance with hypoglycemia. When initially tested, the Claimant's glucose was 19 despite have taken her insulin and eating. The Claimant was treated and discharged with the diagnoses of hypoglycemia with history of diabetes.

For the period from May 12, 2011 through February 16, 2012, the Claimant was discharged from counseling after achieving her goal regarding her alcohol dependency.

On July 11, 2012, the Claimant's pap smear was negative for intraepithelial lesion or malignancy.

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 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 insulin dependent diabetes mellitus, brittle diabetes, hypertension, incontinence, seizures, headaches, joint pain, back pain, COPD, abdominal pain, hypothyroidism, peripheral neuropathy, alcohol dependence, left ankle fracture, anxiety, bipolar disorder, and depression.

Listing 1.00 defines musculoskeletal system impairments. Disorders of the musculoskeletal system may result from hereditary, congenital, or acquired pathologic processes. 1.00A Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases. 1.00A Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. 1.00B2a

Categories of Musculoskeletal include:

1.02 Major dysfunction of a joint(s) due to any cause: Characterized by gross anatomical deformity (e.g. subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively as defined in 1.00B2b; or

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, wrist, hand), resulting in inability to perform fine and gross movements effectively a defined in 1.00B2c

1.03 Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint, with the inability to ambulate effectively, as defined in 1.00B2b, and return to effective ambulation did

> not occur, or is not expected to occur, within 12 months of onset.

Listing 9.00 discusses endocrine disorders to include diabetes mellitus. Severe episdodes of hypoglycemia may lead to complications such as seizures or loss of consciousness (evaluated under Listing 11.00), or altered mental status and cognitive deficits (evaluated under Listing 12.00). Serious complications that arise from this condition are evaluated under the affected body system.

To meet 11.02, documentation providing a detailed description of a typical seizure pattern, including all associated phenomena, occurring more frequently than once a month, in spite of at least three months of prescribed treatment with daytime episodes (loss of consciousness and convulsive seizures) or nocturnal episodes manifesting residuals which interfere significantly with activities during the day must be provided. To meet Listing 11.03, an individual's non-convulsive epilepsy must be documented by detailed description of a typical seizure pattern including all associated phenomena, occurring more frequently than once weekly despite at least 3 months of prescribed treatment with alteration of awareness or loss of consciousness. Additionally, documentation of transient postictal manifestations of unconventional behavior or significant interference with activity during the day is required. Here, the evidence shows, in essence, office visits for the renewal of medication for the Claimant's seizures as well as treatment for nail fungus, constipation, and acne. The compelling testimony regarding the frequency and nature of the seizures was not supported by objective evidence or that the seizures continued despite adherence to prescribed treatment.

Listing 11.14 requires a diagnosis of peripheral neuropathy along with disorganization of motor function in spite of prescribed treatment.

In this case, the Claimant fractured her ankle in May 2011. The evidence confirms that the Claimant remained non-weight bearing through August 2011. In October 2011, x-rays confirmed delayed union of the fracture. The evidence further shows that the ankle remains unstable along with associated pain. At the time of hearing, the Claimant was unable to ambulate without an assistive device. The evidence also establishes that the Claimant suffers with uncontrolled diabetes mellitus, despite adherence to prescribed treatment. The medical documentation shows that the Claimant's seizures are assoicated with her hypoglycemia. Seizures that required hospitalization occurred in Janaury 2011, April 2011, November 2011 and December 2011. The Claimant also suffers with peripheral neuropathy associated with her diabetes mellitus. The Claimant's condition was noted as deteriorating. After review of the entire record, it is found that the combination of the Claimant's musculoskeletal and complications with her diabetes mellitus, meets or is the medical equivalent thereof, Listings 1.02 and 9.00. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

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 benefit program.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.

2. The Department shall initiate processing of the June 23, 2011 application, retroactive to April 2011, to determine if all other non-medical criteria are met and inform the Claimant, and her authorized hearing representative, 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 April 2014.

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

Date Signed: March 14, 2013

Date Mailed: March 14, 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.

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/tm

cc: [redacted]