

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

IN THE MATTER OF:

[REDACTED] Reg.
[REDACTED]
Hearing
Oakland

No. 2012 65484
Issue No. 2009
Case No. [REDACTED]
Date: October 8, 2012
County DHS (04)

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 Claimant's request for hearing. After due notice, an in-person hearing was held on October 8, 2012. The Claimant appeared and testified. [REDACTED] also appeared as a witness for the Claimant. [REDACTED], the Claimant's Authorized Hearing Representative, also appeared. [REDACTED] ES, appeared and testified on behalf of the Department.

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 upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant applied for MA-P on July 7, 2011, Retro MA-P (April 2011).
2. On March 6, 2012, the Medical Review Team (MRT) determined that the Claimant was not disabled. (Exhibit 1)
3. On March 16, 2012 the Department notified the Claimant of the MRT determination.

4. On May 18, 2012 the Department received the Claimant's timely written request for hearing.
5. On August 29, 2012, the State Hearing Review Team (SHRT) found the Claimant not disabled. (Exhibit 3)
6. An Interim Order was issued October 23, 2012 requesting that additional medical evidence be obtained by the Department.
7. New evidence was submitted to the State Hearing Review Team (SHRT) January 29, 2013.
8. The State Hearing Review Team (SHRT), on March 15, 2012, found the Claimant not disabled.
9. Claimant alleged physically disabling impairments due to Chronic Obstructive Pulmonary Disorder, Asthma, and Hypertension.
10. The Claimant alleged mental disabling impairments due to depression, (major depressive disorder) and post traumatic stress disorder.
11. On the date of the hearing Claimant was [REDACTED] years of age with a [REDACTED] birth date. The Claimant is currently [REDACTED] Claimant is 5'3" and weighed approximately 180 pounds.
12. The Claimant completed the 7th grade and attended special education classes. Her math skills are limited; she cannot multiply or divide. Claimant's ability to make a shopping list is limited as she cannot spell.
13. The Claimant is not currently participating in substantial gainful activity.
14. The Claimant has a prior work history cleaning homes, a server for a caterer, setting up tables and clearing them, lifting between 5 to 10 pounds.
15. The Claimant's impairments have lasted or are expected to last 12 months or more.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or Department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (RFT).

Federal regulations require that the Department use the same operative definition of the term “disabled” as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

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

This is determined by a five step sequential evaluation process including whether the Claimant is engaged in current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five step sequential evaluation, and when a determination can be made at any step as to the claimant’s disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920

The first step that must be considered is whether the claimant is still partaking in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. In the current case, as outlined above, the first step looks at the individual’s current work activity. In the record presented Claimant has testified that she is not working, and is not involved in substantial gainful activity and therefore is not ineligible for disability benefits under Step 1.

The second step that must be considered is whether or not the claimant has a severe impairment. 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. A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual’s physical or mental ability to perform basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). The impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). The term “basic work activities” means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples of these 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. 20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are “totally groundless” solely from a medical standpoint. This is a *de minimus* standard in the disability determination that the court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

The Claimant has alleged physical disabling impairments due to Chronic Obstructive Pulmonary Disorder, Asthma, and Hypertension.

The Claimant has alleged mental disabling impairments due to Major Depression and Post Traumatic Stress Disorder. A summary of the medical evidence follows.

A consultative Medical Examination Report was completed on [REDACTED]. The report noted breath sounds on expiration. The current diagnosis was Asthma, COPD, ovarian cyst and hypertension. The examiner also noted depression and anxiety as part of the examination. The examiner noted that the Claimant's condition was deteriorating and imposed restriction on the Claimant's physical capabilities. The Claimant was restricted to lifting less than 10 pounds frequently and 10 pounds occasionally. The Claimant was restricted to standing or walking at least 2 hours in a 6 hour work day. The Claimant was also restricted from pushing or pulling with either hand.

On [REDACTED] Claimant was seen in the emergency room after a 3-4 day admission related to her asthma and COPD, she was sent home with prednisone and an inhaler from the hospital stay but her breathing was very tight again. At the time she was seen the respiratory exam noted irregular, tachypneic, respiratory distress, breath sounds, bilateral anterior, posterior, upper lobe, middle lobe, wheezes present moderate. Claimant was given a breathing treatment IV with steroids and IV of antibiotics. The impression was COPD and the Claimant was admitted as an inpatient. On [REDACTED] Claimant was examined and found to have decreased breathing sounds in her lungs bilaterally with prolonged expiration, expiratory wheezing more on lower left side. The Claimant was discharged on [REDACTED] with prednisone dosage increased, as well as an Advair inhaler, and a lbuterol inhaler. The final diagnosis was COPD exacerbation, anxiety, and hypertension.

On [REDACTED] The Claimant was admitted and treated for acute respiratory distress, exacerbation of COPD, dysfunction uterine bleeding, exacerbation of asthma, generalized anxiety, menometrorrhagia, tobacco use disorder, smoking cessation

treatment with nicotine replacement. While receiving steroid therapy, Claimant became hypertensive and was treated for high blood pressure. She was discharged home in stable condition. There was no evidence of pulmonary embolism

A consultative psychiatric examination was conducted [REDACTED]. The exam noted the Claimant appeared to be clinically depressed. Cognitively the Claimant was evaluated as functioning at Low/Average range of intelligence. The evaluator did not find post traumatic stress disorder to be one of Claimant's diagnoses but noted she is certainly very depressed. The final diagnosis was major depressive disorder, and a GAF of 60. The examiner concluded prognosis was poor because the Claimant continues to engage in self-defeating behaviors, due to alcohol and nicotine dependence. The evaluation concluded that Claimant's mental ability to relate to others is within normal limits. Claimant has ability to understand, remember and carry out simple tasks and maintain her own schedule; however, her depression may interfere with her performance on and off. Claimant's ability to withstand the stress and pressures associated with day-to-day work activity is markedly impaired due to her depression.

The Claimant's treating psychiatrist conducted an evaluation in [REDACTED] and noted that the Claimant had an extensive history of substance abuse. The Claimant's mood was dysphoric, affect was constricted, auditory hallucinations were noted, thought process and content was within normal limits, attention/concentration was within normal limits. Judgment was adequate and she was oriented to person place and time. Her GAF was 50 and the diagnosis was post traumatic stress disorder and major depressive disorder, recurrent severe.

Claimant has presented medical evidence of several hospital admissions for COPD and asthma as well as an admission for hypertension. The Claimant also has depression which two doctors have diagnosed.

The Administrative Law Judge finds that the Claimant's medical evidence as summarized above presents sufficient objective medical evidence to substantiate the alleged disabling impairment(s), establishing that she does have some physical 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 minimus effect on the Claimant's basic work activities. Further the impairment has lasted continuously for twelve months; therefore, the Claimant is not disqualified, and is therefore enough to pass step two of the sequential evaluation process.

In the third step of the sequential evaluation, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This is, generally speaking, an objective standard; either claimant's impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of "not disabled"; if the claimant's impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that the claimant's medical records do not contain medical evidence of an impairment that meets or equals a listed impairment. Listing 12.04 Affective Disorders, Depression and 12.06 Anxiety Related Disorders, PTSD were reviewed and it was determined that while the Claimant does suffer from depression and is diagnosed also with post traumatic stress disorder, the listing was not met. In both examinations the Claimant's GAF score was 50 and 60 and there was demonstrated ability with regard to orientation to place and time and judgment was adequate. The consultative psychiatric exam noted prognosis was poor due to claimant's self-defeating habits, involving alcohol and prior drug rehabilitation but also noted that Claimant's ability to handle the pressures of work were markedly impaired due to her depression. Additionally, Listing 3.02, Chronic Pulmonary Insufficiency and 3.03, Asthma were also considered in light of the objective evidence and after review of the medical records it is determined that they were insufficient to establish sufficient admissions for asthma as set forth in the listing and with regard to COPD the blood gas measurements set for in the listing were not demonstrated.

Ultimately, based on the medical evidence, it is found that the Claimant's impairments do not meet the intent and severity and specific requirements of a listed impairment. Therefore, the claimant cannot be found to be disabled at this step, based upon medical evidence alone. 20 CFR 416.920(d). We must thus proceed to the next step, step 4 in the sequential evaluation.

The fourth step in analyzing a disability claim requires an assessment of the claimant's residual functional capacity ("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). 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 e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) 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 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 cleaning homes, a server for a caterer, pushing carts of dishes and food, setting up tables and clearing them lifting up to 10

pounds or more. The Claimant did some baby sitting but stopped as she testified that she was unable to lift the children.

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 able to walk about one block slowly due to shortness of breath and can stand for 20 minutes and sit for 30 minutes. The Claimant can grocery shop with assistance from her husband. Claimant can tie her shoes and bend at the waist. The claimant also has difficulty sleeping at night due to her depression. The medical evidence does contain physical restrictions placed upon the Claimant by her doctor's examination that limits her ability to ambulate and climb stairs due to shortness of breath and imposed limitations such that Claimant can only carry less than 10 pounds frequently, cannot sit/stand/ walk for at least 2 hours in an 8 hour workday, and cannot push or pull repetitively with either hand/arm. 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.

A review of the medical evidence and testimony of the Claimant as well as the current limitations imposed by her doctor are deemed sufficient to support a finding that Claimant cannot perform past relevant work. Thus Step 5 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 [REDACTED] years old with a 7th grade education and a work history of unskilled light work. The Claimant is considered to be of a person closely approaching advanced age for MA-P purposes. 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 reveals that the Claimant has had numerous episodes of asthma requiring emergency room treatment and two hospitalizations due to COPD with severe breathing problems and also high blood pressure exacerbation. The claimant has mental impairments which includes depression and post traumatic stress disorder. Lastly the claimant is 5'3" and weighs 180 pounds, making her obese. The Claimant

credibly testified that she can dress herself and can tie her shoes and can bend from the waist and can squat. The Claimant has difficulty with climbing stairs and has to stop when doing so due to shortness of breath. The Claimant's treating physician has indicated that he considers the Claimant's condition to be deteriorating and has imposed restrictions on lifting, standing and sitting and limited the Claimant to lifting less than 10 pounds frequently. Also of concern and considered was the Claimant's depression which is ongoing and for which she is in treatment. It is determined after review of the medical records presented that alcohol and drugs are not deemed material.

It is well established that the evaluations and conclusions of the treating physician are "controlling" if well-supported by medically acceptable clinical and laboratory 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 undersigned to objective medical evidence and clinical examinations observations and opinions of the Claimant's treating physician.

In consideration of the foregoing and in light of the objective limitations, it is found that the Claimant retains the residual functional capacity for work activities on a regular and continuing to meet at the physical and mental demands required to perform sedentary work in 20 CFR 416.967(b).

After review of the entire record, the testimony of the Claimant and the medical evidence and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix I I] as a guide, specifically Rule 201.09, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

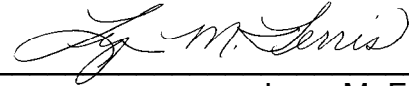
DECISION AND ORDER

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 July 7, 2011 application and retro MA-P application (April 2011) 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 April 2014 in accordance with Department policy.



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

Date Signed: April 11, 2013

Date Mailed: April 11, 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

LMF/cl

cc:

