

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

IN THE MATTER OF:



Reg No.: 2012-67598
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: November 15, 2012
Oakland County DHS (02)

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 Madison Heights, Michigan on Thursday, November 15, 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") 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 and SDA benefits on March 28, 2012.
2. On June 6, 2012, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 1, 2)
3. On July 16, 2012, the Department notified the Claimant of the MRT determination.
4. On July 24, 2012, the Department received the Claimant's timely written request for hearing.

5. On September 14th and December 18, 2012, the SHRT found the Claimant not disabled. (Exhibit 4)
6. The Claimant alleged physical disabling impairments due to trigger fingers, nerve damage, and acid reflux.
7. The Claimant has not alleged any mental disabling impairment(s).
8. At the time of hearing, the Claimant was 53 years old with a [REDACTED], birth date; was 5'5½" in height; and weighed approximately 260 pounds.
9. The Claimant is a high school graduate with vocational training and an employment history as a direct care worker, night club manager, and as an activity director at a nursing home.

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).

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, 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 carpal tunnel syndrome, trigger fingers, nerve damage, and acid reflux.

On November 17, 2011, the Claimant presented to the hospital with complaints of nausea, vomiting, and diarrhea. On November 22, 2011, x-rays of the lumbar spine and hips revealed spondylotic changes of the lumbar spine and mild osteoarthritic changes. Chest x-rays confirmed bibasilar subsegmental atelectasis. A CT scan of the abdomen and pelvis revealed colonic diverticulosis without evidence of diverticulitis, and small esophageal hiatal hernia. The Claimant was discharged on November 28th with the diagnoses of perianal ulceration, right axillary lesion/sebaceous cyst, and diarrhea.

On February 8, 2012, the Claimant presented to the hospital with complaints of a rash. The Claimant was treated with oral steroids and was discharged the following day.

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On February 16, 2012, x-rays of the left hand/wrist revealed elongated ulnar styloid process possible associated with ulnar impingement.

On March 16, 2012, the Claimant presented to the hospital with complaints of multiple abscesses. Irrigation and debridement was performed without complication. The Claimant was discharged on March 20th with the diagnoses of hidradenitis, hypertension, and cephalalgia.

On March 26, 2012, the Claimant presented to the hospital with complaints of nausea, vomiting, and diarrhea. The Claimant was rehydrated and given antiemetics and discharged in stable condition.

On April 23, 2012, the Claimant treated for an abscess.

On May 3, 2012, the Claimant was admitted to the hospital where she was treated and discharged the following day with the diagnoses of chest pain and gastro-esophageal reflux disease.

In May 2012, the Claimant's physician wrote a statement confirming a diagnosis of severe autoimmune neutropenia.

On June 1, 2012, nerve conduction studies revealed evidence of bilateral median sensorimotor neuropathy consistent with moderate bilateral CTS along with evidence of right ulnar sensory neuropathy. Conservative treatment was recommended.

On June 18, 2012, the Claimant attended an orthopedic appointment. The physical examination revealed positive Tinel's sign over the right ulna as well as the right cubital tunnel. X-rays were negative. The diagnoses were suspected early osteoarthritis of the bilateral right index and middle fingers, trigger finger of the right thumb, and right double crush syndrome with ulnar neuropathy at the carpal and cubital tunnel.

On June 29, 2012, the Claimant attended a consultative evaluation. The Claimant was found able to lift/carry 10 pounds with her right hand/arm and 20 with her left with a grip strength of 3/5 on the right and 4/5 on the left. The diagnoses were autoimmune disease, CTS bilaterally, and numbness in right hand and fourth and fifth digits possible due to ulnar nerve injury. The Internist opined that the Claimant had mild limitation of physical activity.

On July 2, 2012, an x-ray of the right hand found no significant abnormality.

On July 18, 2012, the Claimant underwent right ulnar release, median nerve release, and trigger finger release surgery without complication.

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On July 30, 2012, the Claimant attended a follow-up appointment status post surgery. The incision site was healing well without signs of infection. Decreased flexion with second and third digits was noted with manual muscle testing at about 4/5. The Claimant was to follow-up in three weeks.

On August 21, 2012, the Claimant presented to the emergency room with complaints of drainage from her wound. The Claimant was treated and discharged the same day.

On September 10, 2012, the Claimant attended a follow-up appointment. X-rays showed fairly normal joint space with mild subchondral sclerosis. The diagnoses were left ulnar neuropathy, osteoarthritis of the right middle and right index finger, and right trigger thumb. The Claimant was referred to occupational therapy.

On October 17, 2012, nerve conduction studies found evidence of bilateral median sensorimotor neuropathy consistent with moderate bilateral CTS and bilateral ulnar sensory neuropathy. Non-steroid anti-inflammatory drugs were prescribed as well as wrist splints. Occupational therapy was recommended.

On November 13, 2012, x-rays of the left wrists confirmed carpal tunnel syndrome, lesion of the ulnar nerve, trigger finger, and De Quervain's tendonitis.

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 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 spondylotic changes and osteoarthritis of the lumbar spine, colonic diverticulosis, perianal ulceration, right axillary lesion/sebaceous cyst, chronic vomiting/diarrhea, CTS, ulnar impingement, hidradenitis, hypertension, and cephalagia, multiple abscesses, severe autoimmune neutropenia, ulnar sensory neuropathy, De Quervain's tendonitis, and trigger finger.

Listing 1.00 (musculoskeletal system), Listing 4.00 (cardiovascular system), Listing 5.00 (digestive system), Listing 8.00 (skin disorders), Listing 11.00 (neurological), and Listing 14.00 (immune system disorders) were considered in light of the objective findings. The evidence confirms mild to moderate musculoskeletal limitations. There was no

evidence of major dysfunction of joints or gross anatomical deformity, fracture, or cord compression; ongoing or persistent cardiac impairment, despite prescribed treatment, or evidence of end organ as a result of the Claimant's hypertension. The evidence does not meet the intent and severity requirement of a digestive system, skin disorder, neurologic, or immune system disorder. Although the objective medical records establish serious physical impairment(s), these records do not meet, and are not the medical equivalent, a Listing. Accordingly, the Claimant can not be found disabled, or not disabled, at Step 3.

Before considering the fourth step in the sequential analysis, a determination of the individual's residual functional capacity ("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 residual functional capacity with the demands of past relevant work. *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 (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 spondylotic changes and osteoarthritis of the lumbar spine, colonic diverticulosis, perianal ulceration, right axillary lesion/sebaceous cyst, chronic vomiting/diarrhea, CTS, ulnar impingement, hidradenitis, hypertension, and cephalagia, multiple abscesses, severe autoimmune neutropenia, ulnar sensory neuropathy, De Quervain's tendonitis, and trigger finger. The Claimant testified that she is able to walk 2 blocks; grip/grasp with difficulties; sit without issue; lift/carry little weight; stand for less than 2 hours; and is able to bend but experience some difficulty when squatting. The evidence shows mild to moderate physical limitations. After review of the entire record to include the Claimant's testimony, it is found that the Claimant maintains the residual functional capacity to perform at least unskilled, 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 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 is not considered. 20 CFR 416.960(b)(3).

The Claimant's prior work history consists of work as a direct care worker, night club manager, and as an activity director for a nursing home. In consideration of the

Claimant testimony and the Occupational Code, the Claimant's prior work as a direct care worker is considered unskilled, light work, while the manager position is categorized as semi-skilled, light work. The nursing home activity director is considered semi-skilled, sedentary 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. In light of the entire record and the Claimant's RFC (see above), it is found that the Claimant is unable to perform all the duties of past relevant employment. Accordingly, the Claimant's eligibility under Step 5 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). At the time of hearing, the Claimant was 53 years old thus considered to be closely approaching advanced age for MA-P purposes. The Claimant is a high school graduate with some distant vocational training. 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 spondylotic changes and osteoarthritis of the lumbar spine, colonic diverticulosis, perianal ulceration, right axillary lesion/sebaceous cyst, chronic vomiting/diarrhea, CTS, ulnar impingement, hidradenitis, hypertension, and cephalagia, multiple abscesses, severe autoimmune neutropenia, ulnar sensory neuropathy, De Quervain's tendonitis, and trigger finger. The medical records further show mild to moderate physical limitations. After review of the entire record, and in consideration of the Claimant's age, education, work experience, and RFC, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.15, it is found that the Claimant is not disabled for purposes of the MA-P program 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

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impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI 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.

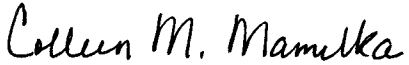
In this case, the Claimant is found not disabled for purposes of the MA-P program; therefore, she is found not disabled for purposes of SDA benefit program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant not disabled for purposes of the MA-P benefit program.

Accordingly, It is ORDERED:

The Department's determination is AFFIRMED.


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

Date Signed: January 10, 2013

Date Mailed: January 10, 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.

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- 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:

