

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No. 2012 75237
Issue No. 2009
Case No. [REDACTED]
Hearing Date: December 12, 2012
County: Oakland (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 December 12, 2012 from Walled Lake, Michigan. The Claimant appeared and testified. [REDACTED], of [REDACTED] the Claimant's Authorized Hearing Representative also appeared and testified. [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 and retro MA-P (October 2011), on December 29, 2011.
2. On May 23, 2012, the Medical Review Team (MRT) determined that the Claimant was not Disabled. (Exhibit 1)
3. On June 6, 2012, the Department notified the Claimant of the MRT determination.

4. On August 13, 2012, the Department received the Claimant's timely written request for hearing.
5. On October 26, 2012, the State Hearing Review Team (SHRT) found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued December 19, 2012 and a consultative exam was ordered to be obtained. The new evidence was submitted to the State Hearing Review Team on February 15, 2013.
7. The State Hearing Review Team (SHRT) on April 19, 2013, found the Claimant not Disabled.
8. Claimant alleged physically disabling impairments due to low back pain, pain in both knees, diabetes, arthritis, hypertension, gastroesophageal reflux, and chronic left hip pain causing Claimant to walk with a limp and obesity.
9. The Claimant has alleged mental disabling impairments due to depression.
10. On the date of the hearing Claimant was 58 years of age with a [REDACTED] birth date. Claimant is 5'2" and weighed approximately 275 pounds.
11. The Claimant completed the high school and attended 2 years of college earning a managerial certification as an administrative assistant. The Claimant also attended college classes for interior design but did not earn a degree.
12. The Claimant is not currently participating in substantial gainful activity and has not worked since 2009.
13. The Claimant has a prior work history consisting of a cashier at a gas station. The claimant also worked for a sample company handing out samples of products at a supermarket chain.
14. The Claimant's impairments have last 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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of

Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. 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.

In this case, Claimant has presented medical evidence and has alleged physically disabling impairments due to low back pain, pain in both knees, diabetes, arthritis, hypertension, gastroesophageal reflux, and chronic left hip pain causing Claimant to walk with a limp and obesity. The Claimant has alleged mental disabling impairments due to depression. A summary of the medical evidence submitted in this matter follows.

A consultative Medical Examination was conducted on 1/15/13. The examination noted that straight leg raising was positive for both right and left leg. The Claimant was noted to walk with a limp. The Claimant was noted as stable and limitations were imposed. The Claimant was evaluated as being able to lift less than 10 pounds frequently and 10 pounds only occasionally. The Claimant could stand or walk less than 2 hours in an 8 hour work day. The Claimant could not push or pull, or fine manipulate with either hand but could perform simple grasping and reaching. The Claimant could operate foot controls with her right foot only. The Claimant was evaluated as being able to meet her needs in the home. The review of systems noted chronic pain in lower back area and left hip. The examination of Claimant’s back noted muscle spasm and decreased range of motions. The examiner noted painful range of motion in the Left hip. There was also significant swelling in both knees, with painful range of motion. The assessment found left hip pain, lumbar radiculopathy, history of diabetes, history of high blood pressure and obesity.

A psychological consultative evaluation was performed on April 9, 2012. The report noted that the Claimant walks with a limp. The examiner diagnosis was Dysthymic Disorder and a GAF of 65. Although a DHS 49 E was not completed the examiner found that Claimant was able to relate to others, including fellow workers,

supervisors, and general public in a work environment. Claimant has the mental ability to understand, remember and carry out simple tasks. The Claimant had the ability to maintain attention, concentration, persistence and pace when performing routine, well learned tasks. Ability to withstand pressures of stress and pressures associated with day to day work is mildly impaired due to her depressed mood.

The Claimant was seen in the emergency room on January 25, 2011 and was admitted for an overnight stay. The claimant presented with atypical chest pain for one week. A chest x-ray revealed no acute pulmonary process. CT of head revealed no acute intracranial process. The impression/diagnoses, atypical chest pain, rule out acute coronary syndrome. Left upper and lower extremity numbness and tingling, history of depressions and gastroesophageal reflux disease. The Claimant was admitted for further evaluation. The EKG performed was otherwise normal except for a t wave inversion in lead III. A myocardial perfusion imaging SPECT stress test was performed on 10/26/11. The impression was normal scan, normal cardiac wall motion and normal left ventricular ejection fraction over 75%. An echocardiogram was performed on 10/25/11. The findings issued noted mitral valve is normal in structure and function. Tricuspid valve is normal in structure and function, trace tricuspid regurgitation flow is present. Left ventricular ejection fraction is estimated at 60-65%. The echocardiogram appeared normal.

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 has met the requirements 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 impairments, 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 1.00 Musculoskeletal System, Listing 1.02 (Major dysfunction of a joint) and Listing 1.04 (disorders of the spine), as well as 14.09 Inflammatory Arthritis were considered in light of the objective evidence. Additionally a review of Listing 12.04 was made for depression. The Claimant did not meet the listing as the GAF score was 65 and the

Claimant was not markedly limited in and evaluated not significantly limited in enough areas to conclude that her depression, as evaluated clinically after examination does not meet the listing.

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 cashiering for a gas station and handing out samples at a supermarket. The Claimant's testimony established that both these jobs required Claimant stand most of the time at work. The cashiering job also required Claimant to lift cases of soft drinks and milk, stock shelves, and clean and mop floors and clean the bathroom. The Claimant's past work would be deemed light to medium work and unskilled.

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 to medium work.

The Claimant credibly testified that she is able to walk about one block with some pain. The Claimant cannot perform a squat, can shower and dress herself with assistance, can carry one gallon (5 pounds) and can sit 15 minutes and is subject to her

legs swelling, and that her left leg is more swollen than her right. The Claimant has weakness in both hands, and cannot close her left hand completely and has problems grasping with her right hand and can only hold a pencil for a few minutes. The Claimant can drive for only 20 minutes and uses a motorized cart when grocery shopping and needs assistance placing groceries in the cart. The objective medical evidence places that Claimant at significantly limited activity and supports the Claimant's testimony. The medical evidence does contain physical restrictions placed upon the Claimant by the doctor examining her at the consultative examination as set forth in detail above. 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 58 years old and, thus, is considered to be a person of advanced age for MA-P purposes. The Claimant has two years of college education and a certificate as an administrative assistant. She has never worked in any job in a position which would reflect her level of education and thus Claimant's skills are non transferable. 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).

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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 II] as a guide, specifically Rule 201.04, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

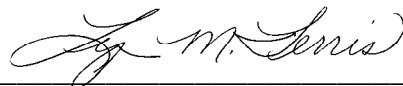
In this case, the Claimant is found disabled for purposes of the MA-P program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant disabled for purposes of the MA-P and SDA benefit programs.

Accordingly, It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate processing of the December 29, 2011 application and retro application (October 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 May 2014 in accordance with Department policy.



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

Date Signed: May 16, 2013

Date Mailed: May 21, 2013

NOTICE: Administrative Hearings 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. Administrative Hearings 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.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

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