

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

IN THE MATTER OF:



Reg. No: 2012-10734
Issue No: 2009/4031
Case No: [REDACTED]
Hearing Date:
February 2, 2012
Lenawee County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 a hearing. After due notice, a telephone hearing was held on February 2, 2012. Claimant personally appeared and testified.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On March 26, 2012, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P), Retro-MA and State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) On May 10, 2011, Claimant filed an application for MA, Retro-MA, and SDA benefits alleging disability.
- (2) On October 20, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that she had a non-exertional impairment and was capable of performing other work, pursuant to 20 CFR 416.920(f). SDA was denied for lack of duration.

- (3) On November 1, 2011, the department caseworker sent Claimant notice that her application was denied.
- (4) On November 7, 2011, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On January 6, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of fibromyalgia, chronic pain disorder, cervical spine stenosis, peripheral neuropathy, bipolar disorder, insomnia, migraines, depression, and schizophrenia.
- (7) On August 28, 2010, Claimant saw her physician for the first time. She was requesting help for chronic neck pain. Possibly related back to multiple motor vehicle accidents and a couple of concussions suggesting the whiplash phenomenon. In April, 2010, Claimant experienced what she called a sudden catch with increased pain and substantial numbness involving the left arm. She has experienced some marginal loss of function, i.e., somewhat diminished grip strength that is diminished to some extent although she still gets vacillating levels of paresthetic symptoms along that left arm. She had a long history of migraine headaches that have seemed to be worse lately. She is also having bilateral foot cramps usually during the day lasting up to 20 minutes. She is under treatment for psychiatric problems through Community Mental Health. Range of motion in her neck is 60% on right and left lateral flexion is slightly better flexion and extension. (Department Exhibit A, p 21).
- (8) On January 13, 2011, Claimant saw her psychiatrist reporting her continued struggle with unemployment. She had been compliant with her medications but reports noticing poor motivation, dysphoria, poor energy levels, and increased anxiety affecting her sleep. (Department Exhibit A, pp 56-60).
- (9) On April 13, 2011, an MRI of Claimant's cervical spine revealed mild, smooth, cervicothoracic levoscoliosis with left apex at the cervicothoracic junction. This may be positional. No acute vertebral collapse or subluxation. Overall, mild, multilevel cervical spondylosis. Of note, there is mild left foraminal stenosis at C5-C6, C6-C7, and C7-T1, predominantly due to unvertebral hypertrophy. (Department Exhibit B, pp 3-4).
- (10) On May 19, 2011, Claimant saw her psychiatrist. She stated she had been experiencing pain in her neck and had numbness in her arms. She felt she was unable to work due to the physical limitations. She stated that her primary physician referred her to University of Michigan for further

evaluation. Her mood had stabilized although she was anxious and had not been sleeping well. (Department Exhibit A, pp 46-).

- (11) On May 10, 2011, Claimant saw her family doctor for a follow-up on her neuropathy. Claimant was unable to feel her arms, both hands felt heavy, her left arm hurt and her left knee was not any better. Claimant was diagnosed with acute chronic neck pain from cervical stenosis (MRI 4/09). She had started taking Lyrica two weeks prior, and was to continue on Vicodin, Celebrex, and wearing the knee sleeve. Claimant received an injection of 40 mg of Depo Medrol in her right deltoid. (Department Exhibit A, p 13).
- (12) On May 26, 2011, Claimant's cervical spine MRI was normal for her age. (Department Exhibit A, p 26).
- (13) On June 6, 2011, Claimant underwent an internal medicine examination from the [REDACTED]. The internist noted Claimant had a history of chronic neck pain, peripheral neuropathy, fibromyalgia, bipolar disorder, and insomnia. (Department Exhibit A, pp 94-98).
- (14) On July 11, 2011, Claimant's psychiatrist completed a psychiatric examination report. He noted that Claimant usually is on time for interviews, is well dressed with good hygiene and has a prior history of factory work. Her psychiatrist indicated Claimant was moderately limited in her ability to maintain attention and concentration for extended periods of time and in her ability to accept instructions and respond appropriately to criticism from supervisors. Diagnosis: Axis I: Bipolar Disorder, History of Alcohol abuse; Opioid dependence in full remission; Axis V: GAF 60. (Department Exhibit A, pp 88-92).
- (15) On July 19, 2011, Claimant's family doctor completed a medical examination report noting she had been treating Claimant since August, 2010. Claimant had a history of bipolar disorder, mania and insomnia. In addition, Claimant had constant neck pain worsened by prolonged sitting/standing with bilateral hand paresthesias. She also had low back pain with bilateral myalgias. Claimant's doctor noted Claimant's condition was deteriorating. (Department Exhibit A, pp 27-28).
- (16) On August 23, 2011, Claimant was evaluated at [REDACTED]. Her musculoskeletal exam revealed diffuse tenderness and increased tone in cervical paraspinal and trapezius muscles, right greater than left. She had limited neck flexion, right lateral rotation, and right shoulder internal rotation. Range of motion in the C-spine, upper extremity, and lumbar spine was otherwise intact. She had 5/5 strength in upper and lower extremities throughout all major muscle groups. She had intact sensation to pinprick and light touch in upper and

lower extremities and 2+ reflexes in the upper extremities and lower extremities. Normal gait. (Department Exhibit A, pp 6A-8A).

- (17) On December 18, 2011, Claimant was seen in the emergency department complaining of neck injury. She was in distress due to pain, complaining of chronic neck pain. She described it as an aching pain, diffusely to the head. Neck assessment revealed tenderness diffusely, pain with range of motion, extension, flexion to the right and left. Claimant was diagnosed with acute chronic neck pain and neck spasm and administered Phenergan and Demerol and discharged.
- (18) On January 31, 2012, Claimant followed up at the [REDACTED]. A physical examination revealed palpation of the spine demonstrated tenderness throughout the cervical spine up until the base of the occiput with tenderness most prominent over C6-C7 vertebra. Right facet loading caused significant pain. Left facet loading caused pain. Paraspinal muscles were mildly tender, but overall not especially painful or tender. Range of motion was full with flexion, extension, bilateral rotation and bilateral bending. Left upper extremity demonstrated patchy numbness over the lateral forearm extending from the wrist to the elbow. She described her mood as down for the past two months. She reported poor concentration, which she felt was secondary to Neurontin. Her sleep remained poor until she increased her dosage of Seroquel. (Department Exhibit A, pp 9A-12A).
- (19) Claimant's psychological evaluation on September 7, 2011, revealed Claimant has been a patient at [REDACTED] the past 5 years and her psychiatrist has been unable to find an effective combination of medications for her. As a result, many of her symptoms are uncontrolled. These symptoms include extreme sleep disturbance (insomnia), paranoia, irritability, day time fatigue, racing thoughts, being unable to sleep for days at a time, dysphoric mood every day for much of the day, anhedonia, amotivation, poor self concept and self-esteem, being hyper verbal, and suicidal ideation. In 2006, she attempted suicide, resulting in psychiatric hospitalization. Two months after her release, she again attempted suicide resulting in another hospitalization. Claimant's psychiatric symptoms prevent her from working at this time, and it appears as though her psychiatrist has thus far been unable to find a combination of medications that adequately controls these symptoms. Claimant's diagnosis: Axis I: Bipolar I Disorder, Severe with Psychotic Features; Axis III: Fibromyalgia, peripheral neuropathy; Axis V: Current GAF=41, Last Year GAF = 41. There was no evidence of malingering. (Department Exhibit A, pp 5-7).

- (20) Claimant is a [REDACTED] year old woman whose birthday is [REDACTED]. Claimant is [REDACTED] tall and weighs [REDACTED] lbs. Claimant completed the eleventh grade.
- (21) Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

CONCLUSIONS OF LAW

The Medical Assistance (“MA”) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, (DHS or department), 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 Reference Tables 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 Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Section 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1). The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

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 413.913. 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 (e.g., 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 to 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 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 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, Claimant is not involved in substantial gainful activity and testified that she has not worked since March 2009. Therefore, she is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting. *Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Claimant alleges disability due to fibromyalgia, chronic pain disorder, cervical spine stenosis, peripheral neuropathy, bipolar disorder, insomnia, migraines, depression, and schizophrenia.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). Claimant has presented some limited 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 Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, 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 individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Claimant has alleged physical and mental disabling impairments due to fibromyalgia, chronic pain disorder, cervical spine stenosis, peripheral neuropathy, bipolar disorder, insomnia, migraines, depression, and schizophrenia.

Listing 1.00 (musculoskeletal system) and Listing 12.00 (mental disorders) were considered in light of the objective evidence. Based on the foregoing, it is found that Claimant's impairment(s) does not meet the intent and severity requirement of a listed impairment; therefore, Claimant cannot be found disabled at Step 3. Accordingly, Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the individual'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) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at

a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity to the demands of past relevant work must be made. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty functioning 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.*

Claimant's prior work history consists of work as a factory worker. In light of Claimant's testimony, and in consideration of the Occupational Code, Claimant's prior work is classified as unskilled, light work.

Claimant testified that she is able to walk a mile and can lift/carry approximately 20 pounds. If the impairment or combination of impairments does not limit an individual's 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 Claimant's testimony, medical records, and current limitations, Claimant cannot be found able to return to past relevant work. Accordingly, Step 5 of 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). At the time of hearing, Claimant was 33 years old and was, thus, considered to be a younger individual for MA-P purposes. Claimant completed the eleventh grade. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from Claimant to the Department to present proof that 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). The age for younger individuals (under 50) generally will not seriously affect the ability to adjust to other work. 20 CFR 416.963(c).

In this case, the evidence reveals that Claimant suffers from fibromyalgia, chronic pain disorder, cervical spine stenosis, peripheral neuropathy, bipolar disorder, insomnia, migraines, depression, and schizophrenia. The objective medical evidence notes no limitations. In light of the foregoing, it is found that Claimant maintains the residual functional capacity for work activities on a regular and continuing basis which includes the ability to meet the physical and mental demands required to perform at least sedentary work as defined in 20 CFR 416.967(a). After review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.24, it is found that Claimant is not 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 Claimant not disabled for purposes of the MA-P benefit programs. Accordingly, it is ORDERED the Department's determination is AFFIRMED.

/s/

Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 4/17/12

Date Mailed: 4/17/12

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.

2011-10734/VLA

VLA/ds

cc:

