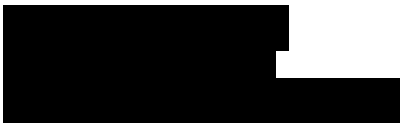


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2012-11845
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 9, 2012
County: Kent County

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 9, 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 April 27, 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)?

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 July 22, 2011, Claimant filed an application for MA benefits alleging disability.
- (2) On September 15, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P, indicating Claimant was capable of performing other work based on her non-exertional impairment, pursuant to 20 CFR 416.920(f). (Department Exhibit A, pp 1-2).
- (3) On October 4, 2011, the department caseworker sent Claimant notice that her application was denied.

- (4) On November 4, 2011, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On January 5, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled because the medical evidence of record indicates that Claimant retains the capacity to perform simple and repetitive tasks that avoid the use of ropes, ladders, scaffolding, and exposure to unprotected heights and dangerous machinery. (Department Exhibit B, pp 1-2).
- (6) On April 27, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled because Claimant retains the capacity to perform a wide range of simple, unskilled jobs that do not require working around hazards such as unprotected heights and dangerous moving machinery. (Department Exhibit C, pp 1-2).
- (7) Claimant has a history of schizophrenia, bipolar disorder, personality disorder, and stomach issues.
- (8) Claimant is a 37 year old woman whose birthday is [REDACTED]. Claimant is 5'1" tall and weighs 143 lbs. Claimant has a high school equivalency education.
- (9) 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").

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 2007. 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 means 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 schizophrenia, bipolar disorder, personality disorder, and stomach issues.

On January 13, 2011, Claimant underwent a psychiatric evaluation while incarcerated. Claimant was serving her fourth stint in prison and had a long history of drinking alcohol, using cannabis and cocaine/crack-with social, family, financial problems-secondary to substance use and has been through many rehabs. In addition, she has had on and off again depression, a history of being abused-while running streets and has had hospitalizations-at Pine Rest and Forest View-while still actively using and having secondary depression-attempted overdose twice but slept it off and did not need to go to the emergency room. Claimant has not received any out patient treatment during her first three incarcerations or during the first seven months of this term of incarceration. She has a family history of overt psychosis or mania. She does not meet the criteria for a major thought or mood disorder and does not meet the criteria for outpatient mental health treatment. She saw the parole board on September 7, 2010, and is waiting to complete RSAT so she can go home in June 2011. She claims to have a long history of mental illness dating back to at least 2001 when she was admitted to Pine Rest Hospital three or four times and Forest View Hospital a couple of times. Her last psychiatric hospitalization was in 2006. During the time that she was going in and out of the hospital, she was actively using substances and the hospitalizations were for secondary

depression or suicidal threats. She claims to have had outpatient follow-up with [REDACTED] and [REDACTED] and the last time she saw a psychiatrist was in December of 2007. Claimant was in no acute distress and she was cooperative during the interview. Her speech was coherent and goal oriented. Rate and rhythm of speech was normal. She complained of whispers of men, but she does not have hallucinations. She is not delusional. Her mood was depressed, her affect labile, but appropriate to content of thought. She was alert and oriented and her memory for both recent and remote events seemed intact. She has low-average intelligence and has some insight into her problem. Clinical assessment: Axis I: Adjustment Disorder with Depression/ Polysubstance Dependence; Axis II: Personality Disorder; Axis III: (reported by Claimant) Seizure disorder, migraines, history of endometriosis, motor vehicle accident with neck and back problems, and polyps removed from vocal chords in 2000; Axis IV: Moderate problems related to legal system/crime; Axis V: GAF=58.

On September 12, 2011, Claimant's PAP smear showed atypical squamous cells of an undetermined significance and were sent out for HPV DNA testing. Testing for chlamydia and gonorrhea was negative.

On September 29, 2011, Claimant was referred to Network 180 after having recently moved back to Kent County seeking crisis mental health services. She was last assessed on 3/26/08. She reported that she had been taking mental health medications as prescribed, however, she was currently reporting command auditory hallucinations telling her to harm herself, continued suicidal ideation and paranoid thoughts. She reported three previous suicide attempts, the last resulting in inpatient hospitalization at Pine Rest in October, 2007. She reports that she has attempted to cut her wrist, overdose, and attempted carbon monoxide poisoning. She did report crack cocaine in 2008 as noted in previous records which led to her being authorized substance abuse residential at Our Hope and she was a "no show." Due to Claimant's presenting issues, Crisis Intervention as an inpatient diversion was discussed and she declined this level of care. There were no Crisis Residential beds available and there were safety concerns. Due to this, she was authorized inpatient and she identified Forest View Hospital as her provider of choice. Community Mental Health services were also recommended due to her history of crisis mental health therapy services. Diagnosis: Axis I: Major Depression, recurrent, with Psychotic features; Anxiety Disorder; Nicotine Dependence; Axis II: Personality Disorder; Axis V: GAF=40. On October 4, 2011, Claimant was discharged from Forest View Hospital.

On November 11, 2011, Claimant saw her primary physician complaining of abdominal pain for the past 2-3 weeks. She stated she had been to the emergency department (ED) several times and the ED could not figure out what the source was. She stated she was prescribed Phernegan, which she said worked well. Claimant wanted Vicodin for the pain and she was given a very limited prescription.

On November 17, 2011, the results of Claimant's hepatobiliary scan and gallbladder ejection were normal.

On November 23, 2011, Claimant's physician called her and informed her that according to the laboratory report she was positive for gonorrhea.

On November 29, 2011, Claimant underwent a CAT scan of the abdomen and pelvis with contrast which revealed a small fibroid at the fundus of the uterus and a questionable 4 or 5 cm in diameter mass in the right adnexa, with a small amount of free fluid in the pelvis. There was minimal diverticulosis of the colon.

On November 30, 2011, Claimant underwent a psychological assessment. She was recently hospitalized at Forest View after she attempted suicide by slitting her wrist. She states that she was acutely depressed at the time. She states her mood to be "okay," but states one of the other concerns for her is the fact that she's suffering some medical problems, namely with her digestive system. She's undergoing testing right now but states her stomach is in constant pain. She adamantly is denying suicidal and homicidal ideation at the present time. She last used cocaine four months ago and uses marijuana everyday, in addition to half a pack of cigarettes. She was not forthcoming that she's gotten Vicodin, which is evident on her MAPS report. She was alert and oriented, with fair grooming and hygiene. She was slightly feisty and had fair eye contact. She had no abnormal movements and her speech was within normal limits. Mood was "okay." Affect appeared slightly feisty and not completely wanting to elaborate on things. She was somewhat constricted, but euthymic. Her thought processes were linear and her insight and judgment were limited overall. Cognition was average to below average.

On December 28, 2011, Claimant reported to CMH for a medication review. She was diagnosed last month with Depressive Disorder and Cannabis Dependence. She does not really feel like her medications are working for her. She does not like the fact that Depakote is making her hair fall out. She has no other complaints right now and seems to be in good spirits. She was alert and oriented, cooperative, pleasant with fair grooming and hygiene. No abnormal movements. Her speech was within normal limits and her mood was "so-so." Her affect appeared euthymic and pleasant. Her thought processes were linear. No psychosis. Her insight and judgment overall were limited. Cognition was average. Diagnosis: Axis I: Depressive Disorder, Anxiety Disorder, Cannabis Dependence, Cocaine Abuse, Nicotine Dependence; Axis III: History of head injury and digestive issues; Axis V: GAF=55.

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 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 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 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 schizophrenia, bipolar disorder, personality disorder, and stomach issues.

Listing 5.00 (digestive 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 quality control inspector. 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 short distances, stand for 15 minutes, sit for hours and carry 20 pounds. The objective medical evidence notes no limitations. 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, it is found that Claimant is able to return to past relevant work, thus Claimant is found not disabled at Step 4 with no further analysis required.

If Step 5 were necessary, 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 41 years old and was, thus, considered to be a younger individual for MA-P purposes. Claimant has a seventh grade education. 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). Where an individual has an impairment or combination of impairments that results in both strength limitations and non-exertional limitations, the rules in Subpart P are considered in determining whether a finding of disabled may be possible based on the strength limitations alone, and if not,

the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience, provide the framework for consideration of how much an individual's work capability is further diminished in terms of any type of jobs that would contradict the nonexertional limitations. Full consideration must be given to all relevant facts of a case in accordance with the definitions of each factor to provide adjudicative weight for each factor.

In this case, the evidence reveals that Claimant suffers from schizophrenia, bipolar disorder, personality disorder, and stomach issues. There was no evidence that as a result of the impairment(s), Claimant was unable to perform significant gainful activity. Claimant's residual functional capacity for work activities on a regular and continuing basis does include the ability to meet at least the physical and mental demands required to perform light work as defined in 20 CFR 416.967(b). After review of the entire record and using the Medical Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically rule 202.20, Claimant would be found not disabled at Step 5 as well.

In this case, Claimant is found not disabled for purposes of the Medical Assistance program.

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 program.

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: 5/29/12

Date Mailed: 5/29/12

VLA/ds

