

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

IN THE MATTER OF:

[REDACTED]

Reg No.: 2012- 24467
Issue No.: 2009 , 4031
Case No.: [REDACTED]
Hearing Date: March 5, 2012
Macomb County DHS (36)

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 the Claimant's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on Monday, March 5, 2012. The Claimant appeared, and testified. [REDACTED], ES appeared on behalf of the Department of Human Services ("Department").

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefit programs?

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, retro MA-P and SDA benefits October 24, 2011.
2. On December 20, 2011, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 1, 3)
3. On December 21, 2011, the Department notified the Claimant of the MRT determination. (Exhibit 2, pp1-3)
4. On January 2, 2012, the Department received the Claimant timely written request for hearing. (Exhibit 1, p. 2)

5. On February 13, 2012, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 4)
6. The Claimant alleged physical disabling impairments due to rotator cuff tear, fractured sternum, high blood pressure, and knee problems, with 4 surgeries in her left knee.
7. The Claimant alleged mental disabling impairments due to depression and anxiety with loss of concentration.
8. At the time of hearing, the Claimant was 56 years old with a September 12, 1955 birth date; was 5’1” in height; and weighed 142 pounds.
9. The Claimant has a GED, the equivalent of a high school education and also has a license as a certified nurse’s assistant (CNA) and a certificate for a medical assisting job. The Claimant has an employment history of working in call centers and as a hostess server.

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 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, conclusions 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

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pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants 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 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)

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a) First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1) When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2) Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a

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sustained basis. *Id.*; 20 CFR 416.920a(c) (2) Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1) In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3) The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4) A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d) If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR 416.920a(d)(2) If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant testified that she is not working. In light of the foregoing, it is found that the Claimant is not involved in substantial gainful activity, 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 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;

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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 physical disabling impairments due to torn right rotator cuff tear, fractured sternum, high blood pressure, and knee problems, with four surgeries in her left knee. The Claimant alleges mental disabling impairments of depression and anxiety.

On [REDACTED] the Mental Status Examination was completed on behalf of the Claimant. The examination found the patient is a 56 year old female with a history of symptoms consistent with dysthymic disorder and episodes of major depression which are now resolved and managed with medication. There are no current psychiatric symptoms, depression, problems with concentration or memory that would affect her ability to do work related activities or appropriately interact in a social or work environment. The Global Assessment Functioning ("GAF") score was 60.

On [REDACTED], the Claimant attended a consultative physical evaluation. The examination was unremarkable. The patient's blood pressure was found within normal limits, no symptoms of angina or signs of congestive heart failure, no neck vein engorgement, heart murmur, gallop, pulmonary rales, visceromegaly or leg edema.

As regards the Claimant's knees, the report found no swelling, crepitation, subluxation or effusion. Full range of movement was exhibited. Claimant is found to be fully ambulatory with stable gait, no difficulty getting up from the chair, or getting on and off the examination table, she could walk on her toes and heels. The knee has full range of movement. (Exhibit 1, page 9).

A report completed by a physician's assistant associated with claimant's family practice physician's group cited severe depression, and that Claimant's condition was deteriorating but that she could meet her needs in the home. (Exhibit 1 pp, 33).

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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 records establishing that she has depression Dysthmic disorder. The Claimant's GAF scores 60. GAFs between 51 and 60 equate to some moderate symptoms OR any moderate difficulty in social, occupational, or school functioning. Ultimately, the medical evidence does establish that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Accordingly, the Claimant's impairment(s) is considered severe and thus further analysis at step 3 is required.

In Step 3, 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 Claimant has alleged physical and mental disabling impairments due knee pain, high blood pressure, torn rotator cuff, , anxiety, and depression.

Listing 1.02 (major dysfunction of a joint(s)) Listing 12.00 (mental disorders) were considered in light of the objective medical evidence. There was no evidence of any physical limitations due to the claimant's knees such that an inability to ambulate as defined by the listing could be established. In order to meet this listing the necessity of use of a walker or two canes in order to ambulate is required. The Claimant's medical evidence contained in her mental status examination did not present evidence of any marked limitations in any area and as stated above the GAF score of 60 supports a finding of moderate symptoms. Ultimately, it is found that the Claimant's impairment(s) do not meet the intent and severity requirement of a listed impairment therefore the Claimant can not be found disabled at Step 3. Accordingly, the Claimant's eligibility under Step 4 must be considered. 20 CFR 416.905(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 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

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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

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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.*

Over the past 15 years, the Claimant worked as a call center operator, and as a hostess/server. In light of the Claimant's testimony and in consideration of the Occupational Code, the Claimant's prior work as a call center operator is unskilled/semi skilled sedentary work and as a waitress is light/ unskilled work.

The Claimant testified that she can lift/carry about 15 pounds; walk about 1/3 of a mile, has difficulty squatting, and can bend at the waist. The Claimant can dress and shower by herself and touch her toes. Although the Claimant reported hypertension and a fractured sternum, no medical records were presented regarding the sternum fracture and the exam with regard to the claimant's hypertension was within normal limits. As regards the Claimant's knees, the consultative doctor's report found althralgia of the knee (knee pain) and did not conclude the Claimant had arthritis of the knee. There was no diagnostic medical evidence of a torn rotator cuff or evidence supporting limitations with regard to the condition. Further, the medical exam including the findings of limitations of motion found that the Claimant had a stable gait, no swelling, and full range of movement. The objective medical records do not contain any physical limitations.

As regards the Claimant's mental disabling limitations, the Claimant credibly testified that she has difficulty concentrating and cannot attend to past hobbies of cross stitching, reading and scrapbooking. Claimant does tend to her house, does the dishes and has a loss of energy and appetite. She does grocery shop and has trouble leaving the house, as people other than her mother make her nervous. The DHS caseworker who was present at the hearing noted for the record that the Claimant appeared to her to be very anxious, upset and very uncomfortable. Notwithstanding the Claimant's testimony of severe depression and symptoms of anxiety, the objective medical evidence found in the Mental Status Examination does not provide a basis to support these symptoms and difficulties presented by the Claimant.

A DHS 49 was also completed by the Claimant's family practice group. The form listed that the Claimant had severe depression and was deteriorating. The DHS 49 was completed by the physician's assistant, not the Claimant's family practice doctor. The Claimant testified that she is seen by the physician's assistant as well as her family practice doctor. The evidence presented by this report cannot be used to establish a medical diagnosis of severe depression because a physician's assistant completed the form and not a doctor, the evidence may be considered to show the severity of the individual's impairments and how it affects the individual's ability to function. The form itself completed in November 2011 indicates that the Claimant was seen by this family practice group since January 2011 and was based on progress notes of [REDACTED]. The form does not indicate whether the clinical impression that the claimant is deteriorating

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is based on other background information or familiarity of the physician's assistant with the Claimant's condition, the extent of her contact with the Claimant and does not specifically reference other relevant evidence to support the finding for the clinical impressions. (Exhibit 1 pp 31, 33). It is unknown whether the physician's assistant has any specialty or area of expertise with regard to depression and the clinical findings. Lastly, the information contained in the Medical Exam report completed by the physician's assistance differs significantly from the findings of the psychiatric consultative exam previously discussed. Based upon these considerations, after evaluating all the evidence, the report does not outweigh and cannot be considered controlling. SSR 2006-03p; pages 5-7.

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 the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is able to return to past relevant employment performing at a minimum, call center operator. Accordingly, the Claimant would be found not disabled at Step 4 as well and further analysis beyond Step 4 is not required.

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 202.07, it is found that the Claimant is not disabled for purposes of the MA-P program at Step 4.

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 Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Department policies are found in BAM, BEM, and BRM. A person is considered disabled for SDA purposes if the person has a physical or mental 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, the Claimant is found not disabled for purposes of the SDA benefit program.

DECISION AND ORDER

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

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Accordingly, it is ORDERED:

The Department's determination is AFFIRMED.



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

Date Signed: March 13, 2012

Date Mailed: March 13, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases).

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail to:

Michigan Administrative hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

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cc:

