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

IN THE MATTER OF:

[redacted]

Reg. No: 2012-24800
Issue No: 2009
Case No: [redacted]
Hearing Date:
March 15, 2012
DHS MA Special Processing

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 3-way telephone hearing was held on March 15, 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 27, 2012, the SHRT found Claimant was disabled beginning January 2012, based on Claimant's vocational profile, (closely approaching advanced age at 50, limited education and history of unskilled/semi-skilled work) and using Vocational Rule 201.09 as a guide. The SHRT also found Claimant was not disabled prior to January 2012. This matter is now before the undersigned for a final decision regarding Claimant's disability from the date of application on April 4, 2011 through December 2011.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P) from April 2011 through December 2011?

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 April 4, 2011, Claimant filed an application for MA benefits alleging disability.

(2) On December 2, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P indicating that she was capable of performing other work, pursuant to 20 CFR 416.920(f).

(3) On January 9, 2012, the department caseworker sent Claimant notice that her application was denied.

(4) On January 17, 2012, Claimant filed a request for a hearing to contest the department's negative action.

(5) On February 28, 2012, the State Hearing Review Team (SHRT) issued a prehearing denial of Claimant's application indicating Claimant was not disabled based on Vocational Rule 201.10. However, a review of the Medical Vocational Rules shows that a client approaching advanced age, with a limited or less education and skilled/semi-skilled work history is DISABLED at Vocational Rule 201.10. Therefore, it appears the SHRT erroneously checked the "Denied" box on their form, when in fact the SHRT found Claimant disabled using Vocational Rule 201.10 on February 28, 2012. (Department Exhibit B, p 1).

(6) On March 27, 2012, the SHRT reversed its earlier mistaken denial of Claimant's disputed MA application based on Vocational Rule 201.09 with MA coverage beginning January 1, 2012.

(7) Claimant has a history of spondylolisthesis, recurring deep vein thrombosis (DVT), degenerative joint disease (DJD), sleep apnea, varicose veins, peptic ulcer disease (PUD), cervical spondylosis, cervical degenerative disc disease, cervical bulging discs and lumbar bulging discs.

(8) On October 27, 2010, Claimant was evaluated for neck pain radiating to the shoulders bilaterally, and low back pain radiating down the legs bilaterally to the knee, left greater than the right. On examination, Claimant had tenderness to palpation in the lumbosacral spine, and tenderness to palpation on the cervical spine. On cervicolateral rotation, Claimant had positive pain. On cervical extension to 15 degrees, Claimant also had pain. Claimant had a straight leg raise bilaterally. Claimant was diagnosed with cervical spondylosis, cervical degenerative disc disease, cervical bulging discs and lumbar bulging discs. A cervical medial branch block (MBB) bilaterally under fluoroscopy guidance was administered and she tolerated the procedure well. Caudal epidural steroid injections were also recommended. (Department Exhibit A, pp 62-63, 83-84).

(9) On April 28, 2011, an MRI of Claimant's left knee revealed (1) evidence of probable prior partial medial meniscectomy; probable non-detached

complex tear in the mid-body of the medial meniscus, and free margin tear in the posterior horn of the medial meniscus; (2) moderate medial femoro-tibial osteoarthritis; (3) artifact related to prior distal patellar realignment procedure; (4) mild patellar arthrosis; and (4) prominent venous varicosities. (Department Exhibit A, p 47).

(10) On April 29, 2011, the MRI of Claimant's lumbar spine revealed grade I spondylolisthesis seen L5 on S1 with no spondylolysis. There was no disc herniation, no stenosis, no nerve root swelling or displacement. (Department Exhibit A, p 48).

(11) On May 26, 2011, Claimant was evaluated by an orthopedist. The physical exam showed circulation and sensation was intact. She had -5 degrees of extension to about 100 degrees of flexion. She had mild positive medial joint line tenderness. She also had crepitance over the medial joint line and the patellofemoral joint. The x-ray showed severe narrowing of the medial joint line consistent with osteoarthritis. The orthopedist recommended diagnostic and surgical arthroscopy as she needed total knee replacement. She was given a corticosteroid steroid injection into her right knee and she tolerated the procedure well. (Department Exhibit B, p 12).

(12) On June 13, 2011, Claimant underwent a medical examination on behalf of the department. Claimant reported she suffered from neck pain, back pain, degenerative joint disease of the knee and head pain. The examining physician noted Claimant's condition was deteriorating based on the MRI's of Claimant's knee and back. (Department Exhibit A, pp 45-46).

(13) On August 18, 2011, an MRI of Claimant's cervical spine revealed slight decreased disc height and hydration at C4-C5 and C5-C6 with diffuse disc bulge with effacement of the ventral subarachnoid space, and slight narrowing of the neural foramina, right greater than left. At C6-C7, there was decreased disc height and hydration due to disc dessication, diffuse disc bulge, and effacement of the ventral subarachnoid space and slight narrowing of the right neural foramina, left is normal. (Department Exhibit B, pp 9-10).

(14) On November 21, 2011, Claimant was admitted to the hospital with swelling in her left leg. Claimant had a history of multiple DVT beginning at the age of 15. An ultrasound showed acute deep vein thrombosis at the left lateral and medial gastrocnemius vein. A CT angiogram was also completed due to her shortness of breath and was negative for pulmonary embolism. Claimant was discharged on November 23, 2011, on both Lovenox and Coumadin and scheduled to have daily physical therapy/INR

to done for the next 4 days, following which she could follow-up with her primary care physician. (Claimant Exhibit A, pp 2-6).

(15) On November 29, 2011, Claimant underwent a cardiology consultation. Claimant's problems were (1) near syncope after receiving local anesthesia for cyst resection from the right thigh, (2) left knee arthritis pending replacement, (3) deep vein thrombosis left lower extremity, and (4) sleep apnea pending CPAP tritration. The electrocardiogram demonstrated a sinus bradycardia at 55 beats per minute with a QRS axis of 30 degrees with no ischemic changes, though there were non-specific ST-T wave abnormalities present. Claimant was scheduled to undergo a tilt-table test to evaluate for vasovagal syncope and a Lexicscan Myoview stress test in anticipation of her left knee surgery. Claimant was also advised to begin taking 81 mg aspirin daily and to follow up with her primary physician to make adjustments to her Coumadin, as her INR was 3.1. (Department Exhibit B, pp 205-207).

(16) On December 8, 2011, Claimant underwent a CPAP titration study. Claimant had a suboptimal response to positive pressure therapy at 5 to 16 cm of water and poor to fair tolerance to positive pressure therapy. As a result, Claimant was started on autotitrating CPAP machine set between the pressure of 16 and 20 cm of water. (Claimant Exhibit A, pp 9-10).

(17) On January 25, 2012, Claimant saw her cardiologist for a follow-up appointment complaining of chest pain on the left side of her chest which radiated to her left jaw. An EKG showed her heart rate was 51 beats per minute with normal sinus rhythm. A stress test Persantine and 2D echocardiogram were recommended to rule out cardiopulmonary disease. (Department Exhibit B, p 210).

(18) On February 2, 2012, an echocardiogram showed normal left ventricular size, thickness, and function, with an ejection fraction of 66 percent. No evidence of pericardial effusion. Echo Doppler and color-flow mapping revealed trivial tricuspid valvular regurgitatioin. No mass, thrombi, or vegetations were observed. (Department Exhibit A, p 240).

(19) On March 6, 2012, Claimant's physician submitted a letter documenting that Claimant had been under her care for treatment and continued evaluation of a left lower extremity DVT, DJD, PUD, Chronic Bilateral Knee Pain, Sleep Apnea, and Anxiety. Claimant currently requires close monitoring of her INR as part of her anticoagulation management for her recurring DVT's. She is also currently following up with a cardiologist on a regular basis secondary to her conditions. (Claimant Exhibit A, p 7).

(20) On March 15, 2012, an x-ray was performed of Claimant's right upper quadrant based on her complaint of pain. The limited images through the

lung bases revealed a 5 mm right lower lobe pulmonary nodule which appeared stable when compared to the CAT scan thorax from 2/7/12. (Department Exhibit B, p 193).

(21) Claimant is a [redacted] y ear old woman whos e birthday is [redacted] Claimant is [redacted] tall and weighs [redacted] bs. Claimant completed the eleventh grade.

(22) Claimant was appealing t he denial of Social Security disability benefits at the time of the hearing.

CONCLUSIONS OF LAW

The Medical Assistance ("MA") program is est ablished by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administer ed by the Department, (DHS or department), pursuant to MCL 400.10 *et seq.* and MCL 400.105. Department policies are found in the Br idges Administ rative Manual ("BAM"), th e 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 phys ical or mental im pairment which can be expected to result in death or which has lasted or can be expect ed to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claimi ng a physical or mental disability h as the burden to esta blish it th rough the us e of competent medical evidenc e from qualified medical sources such as his or her medical history, clinica l/laboratory findings, diagnosis/prescri bed treatment, prognosis for recovery and/or medical assessment of ability to do work-related ac tivities o r ability to reason and make appropriate mental adjustments, i f a mental disab ility is alleged. 20 CRF 413 .913. An individual's subjective pain com plaints ar e not, in and of themselves, sufficient to establish disab ility. 20 CF R 416.908; 2 0 CFR 4 16.929(a). Similarly, conclusor y statements by a phys ician 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, t he federal regulations require several factors to be considered, including: (1) t he location/dur ation/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medi cation the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pa in; and (4) the effect of the applic ant'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 limitations in light of the objective medical evidence presented. 20 CFR 416.929(c)(94).

In determining whet her you are disabled, we will consider all of your symptoms, including pain, and the extent to which y our symptoms can reasonably be accepted as consistent with objective m edical evidence, and other evi dence. 20 CF R 416.929(a).

Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone. 20 CFR 416.945(e).

In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you. We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work. 20 CFR 416.929(a).

Since symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, we will carefully consider any other information you may submit about your symptoms. 20 CFR 416.929(c)(3). Because symptoms such as pain, are subjective and difficult to quantify, any symptom-related functional limitations and restrictions which you, your treating or examining physician or psychologist, or other persons report, which can reasonably be accepted as consistent with the objective medical evidence and other evidence, will be taken into account in reaching a conclusion as to whether you are disabled. 20 CFR 416.929(c)(3).

We will consider all of the evidence presented, including information about your prior work record, your statements about your symptoms, evidence submitted by your treating, examining or consulting physician or psychologist, and observations by our employees and other persons. 20 CFR 416.929(c)(3). Your symptoms, including pain, will be determined to diminish your capacity for basic work activities to the extent that your alleged functional limitations and restrictions due to symptoms, such as pain, can reasonably be accepted as consistent with the objective medical evidence and other evidence. 20 CFR 416.929(c)(4).

In Claimant's case, the ongoing pain and other non-exertional symptoms she describes are consistent with the objective medical evidence presented. Consequently, great weight and credibility must be given to her testimony in this regard.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is <u>not</u> required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).

2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).

3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).

4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).

5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

Claimant has not been employed since February 2011; consequently, the analysis must move to Step 2.

In this case, Claimant has presented the required medical data and evidence necessary to support a finding that Claimant has significant physical limitations upon her ability to perform basic work activities.

Medical evidence has clearly established that Claimant has an impairment (or combination of impairments) that has more than a minimal effect on Claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63.

In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Claimant's medical record will not support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective physical findings, that Claimant cannot return to her past relevant work because the rigors of working as a maid are completely outside the scope of her physical abilities given the medical evidence presented.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

(1) residual functional capacity defined simply as "what can you still do despite you limitations?" 20 CFR 416.945;

(2) age, education, and work experience, 20 CFR 416.963-.965; and

(3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once Claimant reaches Step 5 in the sequential review process, Claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services,* 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that Claimant has the residual functional capacity for substantial gainful activity.

After careful review of Claimant's extensive medical record and the Administrative Law Judge's personal interaction with Claimant at the hearing, this Administrative Law Judge finds that Claimant's exertional and non-exertional impairments render Claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The department has failed to provide vocational evidence which establishes that Claimant has the residual functional capacity for substantial gainful activity and that, given Claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which Claimant could perform despite Claimant's limitations. Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program. Consequently, the department's denial of her April 4, 2011, MA application cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly found Claimant was disabled beginning January 2012 and erred in determining Claimant is not currently disabled for MA eligibility purposes.

Accordingly, the department's decision is AFFIRMED in part, and REVERSED in part, and it is Ordered that:

1. The department shall process Claimant's April 4, 2011, MA application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.

2. The department shall review Claimant's medical condition for improvement in April 2014, unless her Social Security Administration disability status is approved by that time.

3. The department shall obtain updated medical evidence from Claimant's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

__/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.

VLA/ds

cc: [redacted]