

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

IN THE MATTER OF:



Reg. No.: 2012-27216
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: March 21, 2012
County: 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 21, 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 May 21, 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) and Retro-MA?

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 5, 2011, Claimant filed an application for MA and Retro-MA.
- (2) On December 5, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that she was capable of performing other work, pursuant to 20 CFR 416.920(f).

- (3) On January 6, 2012, the department caseworker sent Claimant notice that her application was denied.
- (4) On January 30, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On February 2, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform light exertional tasks of a simple and repetitive nature. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of arthritis, gout, diffuse expiratory wheezing and rhonchi, bilateral lower extremity edema, hypertension, high cholesterol, congestive heart failure, thyroid problem, anemia, degenerative disc disease lumbar spine, chronic obstructive pulmonary disease, sleep apnea and depression.
- (7) Claimant is a 48 year old woman whose birthday is [REDACTED]. Claimant is 5'4" tall and weighs 250 lbs. Claimant completed a high school equivalent education.
- (8) 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 1999. 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 arthritis, gout, diffuse expiratory wheezing and rhonchi, bilateral lower extremity edema, hypertension, high cholesterol, congestive heart failure, thyroid problem, anemia, degenerative disc disease lumbar spine, chronic obstructive pulmonary disease, sleep apnea and depression.

On April 15, 2011, Claimant's chest x-rays showed mild congestive heart failure was present.

On April 22, 2011, a complete two-dimensional transthoracic echocardiogram was performed on Claimant showing left ventricular hypertrophy was present, ejection fraction was 55%, the left atrium was mildly dilated and there was mild mitral regurgitation.

On July 12, 2011, Claimant had an abnormal resting ECG revealing anteroseptal infarction, flat T and QT-prolongation, with a final comment to search for causal disease

and perform treatment. Claimant also underwent a pulmonary function test showing a FVC of 1.92 and 1.59, and a FEV1 of 1.34 and 1.06, showing she had moderate restrictions.

On July 21, 2011, Claimant's MRI lumbar spine without contrast revealed an L4-L5 eccentric right disc bulge narrowing the right neural foramen and an L5-S1 eccentric disc bulge.

On August 2, 2011, Claimant's family physician performed a medical examination of Claimant on behalf of the department. Claimant was diagnosed with degenerative disc disease lumbar spine, hypothyroidism, hyperlipidemia, COPD, hypertension, and elevated liver enzymes. Claimant was noted to be obese and ambulating with stooped side to side gait. Her respiratory exam revealed expiratory wheezes and rhonchi. She had 2+ bilateral lower extremity edema and tenderness in her lumbar sacroiliac spine. Claimant's physician found Claimant was stable.

On August 6, 2011, Claimant underwent a medical examination by the Disability Determination Service. Claimant's chief complaints were hypertension, high cholesterol, congestive heart failure, thyroid problem, anemia, gout and arthritis of the foot, and a chronic back problem. The examining physician's impressions were she had hypertension, hyperlipidemia, congestive heart failure, hypothyroidism, and chronic back pain for which she was currently on medication. Claimant also probably had asthma as she had wheezing and shortness of breath. She was using an inhaler and it was suspected her asthma may be of cardiac origin. Claimant also had gout and arthritis in both feet, confirmed with a blood test and MRI studies. Based on the examination, the physician opined that Claimant has limitations on her physical activities.

On August 6, 2011, Claimant also underwent a psychological examination by the Disability Determination Service. Claimant's prognosis was fair. Claimant demonstrated moderate strengths in concentration as evidenced by the ability to perform calculations accurately, and also moderately intact capacities to pay attention and demonstrate immediate and short-term memory. She displayed some capacity for abstract thinking, but variability in terms of impulse control and judgment. She would appear capable of engaging in simple work-type activities, remembering and executing a several step repetitive procedure on a sustained basis, but would be expected to have difficulty with tasks requiring complex judgment and decision-making. Claimant was diagnosed: Axis I: Adjustment disorder with mixed emotional features; Axis III: Obesity and other medical problems; Axis IV: Claimant has not worked since working security at the airport in 1999; Axis V: GAF=51.

On April 30, 2012, Claimant's family practitioner completed a medical examination on Claimant on behalf of the department. Claimant was diagnosed with hyperlipidemia, hypertension, hypothyroidism, generalized anxiety disorder, chronic obstructive pulmonary disease (COPD), obesity, sleep apnea and low back pain. Claimant is an obese female walks with wide based antalgic gait, with severe bilateral upper lid ptosis

and swelling. Her respiratory exam revealed diffuse wheezes and rhonchi. She had 1+ edema in her bilateral extremities and tenderness and decreased range of motion in her lumbar spine. Her lumbar spine was positive for bilateral paraspinal muscle spasms, and she was depressed. Her family physician opined that her condition was deteriorating.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Claimant has presented some limited medical evidence establishing that she does have some physical 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 arthritis, gout, diffuse expiratory wheezing and rhonchi, bilateral lower extremity edema, hypertension, high cholesterol, congestive heart failure, thyroid problem, anemia, degenerative disc disease lumbar spine, chronic obstructive pulmonary disease, sleep apnea and depression.

Listing 1.00 (musculoskeletal system), Listing 3.00 (respiratory system), Listing 4.00 (cardiovascular system), Listing 7.00 (hematological disorders), Listing 9.00 (Endocrine disorders), Listing 11.00 (neurological), 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.*

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by Claimant in the past. 20 CFR 416.920(f). Claimant's prior work history consists of work as a security guard. In light of Claimant's testimony, and in consideration of the Occupational Code, Claimant's prior work is classified as unskilled, medium work.

In this case, based on the medical evidence submitted, Claimant has limitations on her physical activities and this ALJ finds that Claimant cannot return to past relevant work on the basis of the medical evidence. Therefore, the analysis continues.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds Claimant meets statutory disability on the basis of Medical/Vocational Grid Rule 201.12 as a guide.

In reaching this conclusion, evidence in the file indicates that Claimant's condition is deteriorating.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were incorrect.

Accordingly, the department's determination in this matter is REVERSED.

The department is ORDERED to make a determination if Claimant meets the non-medical criteria for MA and Retro-MA programs. If so, the department is ORDERED to open an MA and Retro-MA case from the date of application and issue supplemental benefits to Claimant.

Additionally, the local office shall initiate an MA review by June 2014, to determine Claimant's eligibility for continued MA and Retro-MA benefits.

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

Date Signed: 6/12/12_____

Date Mailed: 6/12/12_____

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

■ [REDACTED]