

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

IN THE MATTER OF:

[REDACTED]

Reg No.: 2012-45247
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: June 21, 2012
Wayne County DHS (15)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

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 hearing was held in Detroit, Michigan on Thursday, June 21, 2012. The Claimant appeared and testified. The Claimant was represented by [REDACTED]. Participating on behalf of the Department of Human Services ("Department") was [REDACTED].

During the hearing, the Claimant waived the time period for the issuance of this decision, in order to allow for the submission of additional medical records. The evidence was received, reviewed, and forwarded to the State Hearing Review Team ("SHRT") for consideration. On August 8, 2012, this office received the SHRT determination which found the Claimant disabled effective September 18, 2011, three retroactive months prior to the Claimant's [REDACTED] birth date when she turned [REDACTED] years of age relying on Vocational Rule 201.13. The SHRT found the Claimant not disabled for the period from March 2011 (retroactive month) through August 2011. Accordingly, this matter is now before the undersigned for a final determination.

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 SDA and MA-P benefits retroactive to March 2011, on May 19, 2011.
2. On January 12, 2012, the Medical Review Team (“MRT”) found the Claimant not disabled. (Exhibit 1, pp. 1, 2)
3. The Department notified the Claimant of the MRT determination.
4. On April 5, 2012, the Department received the Claimant’s timely written request for hearing. (Exhibit 3)
5. On May 16th and August 2, 2012, the SHRT found the Claimant not disabled. (Exhibit 4)
6. The Claimant alleged physical disabling impairments due to back pain, neck pain, abdominal pain, gastroesophageal reflux disease (“GERD”), ulcer, liver disease, headaches, and dizziness.
7. The Claimant has not alleged any mental disabling impairment(s).
8. At the time of hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth date; was 4’10” in height; and weighed 110 pounds.
9. The Claimant has the equivalent of a high school education with an employment history as a cashier at a fast food restaurant, an assistant teacher, a day care provider, and as a machine operator.
10. The Claimant’s impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

As discussed above, the SHRT found the Claimant disabled effective September 2011, the third retroactive month prior to turning 55 years of age. Accordingly, this discussion focuses on the period from March 2011 through August 2011.

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 416.913. 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 (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 416.945(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).

As outlined above, the first step looks at the individual's current work activity. In the record presented, 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 416.920(a)(4)(ii); 20 CFR 416.920(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 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(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, the Claimant alleges disability due to back pain, neck pain, abdominal pain, GERD, ulcer, liver disease, headaches, and dizziness. As noted above, the focus of this decision is for the period from March 2011 through August 2011. Prior to this period, evidence shows treatment/diagnoses of low back pain with positive straight leg raises at 30 degrees bilaterally.

On [REDACTED], the Claimant sought treatment for mid and low back pain. The physical examination revealed tenderness to palpitation with positive straight leg raise at 30 degrees. The diagnoses were low back pain and lumbosacral degenerative disc disease.

On [REDACTED], the Claimant presented to the hospital with complaints of abdominal pain. Exploratory surgery revealed a perforated duodenal ulcer which was repaired. The Claimant was admitted to the intensive care unit and maintained on a ventilator where she initially improved and was extubated. Subsequently, she developed respiratory distress and was intubated again which she slowly improved. The echocardiogram and Doppler of the lower extremities were unremarkable. The Claimant was discharged on [REDACTED] with the diagnoses of acute abdominal pain, acute peritonitis with duodenal perforation, sepsis, acute hypoxic respiratory failure, adult respiratory distress failure, diabetes, alcohol abuse, anemia, thrombocytopenia, and severe protein-calorie malnutrition.

On [REDACTED] the Claimant sought treatment for back pain. Tenderness to palpitation was noted as was positive straight leg raise test. The diagnoses were low back pain and lumbosacral degenerative disc disease.

On [REDACTED] the Claimant sought treatment for a reported ruptured ulcer in her stomach. There were no further records submitted.

On [REDACTED] the Claimant sought treatment for neck and back pain. Tenderness to palpitations and positive straight leg raise were documented. The diagnoses were lumbosacral degenerative disc disease and low back pain.

On [REDACTED] an ultrasound of the liver was unremarkable.

On [REDACTED] the Claimant attended a consultative evaluation with complaints of chronic back pain. The diagnoses were recent gastrointestinal bleed, chronic hepatitis C, type 2 diabetes, thrombocytopenia and coagulopathy most likely secondary to chronic liver disease, and iron deficiency anemia.

On [REDACTED] the Claimant attended a consultative mental status evaluation. The diagnoses were dysthymic disorder, alcohol abuse, major depressive disorder (recurrent), and post-traumatic stress disorder. The Global Assessment Functioning ("GAF") was 50. The prognosis was fair dependent on treatment and she may be considered incompetent to manage benefit funds due to the history of alcohol abuse.

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 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 minimus* 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 Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms treatment/diagnoses (in part) of acute bronchitis, chronic anxiety, depression, neck and back pain, positive straight leg raise bilaterally, shoulder pain, perforated duodenal ulcer, diabetes, thrombocytopenia, and alcohol abuse. The evidence also confirms diagnoses of dysthymic disorder, major depression, and post-traumatic stress disorder.

Listing 1.00 (musculoskeletal system), Listing 3.00 (respiratory system), Listing 4.00 (cardiovascular system), Listing 9.00 (endocrine system), and Listing 12.00 (mental disorders) were considered in light of the objective evidence. There was no evidence of major dysfunction of joints; nerve root impingement; ineffective ambulation; or the inability to perform fine and/or gross motor skills. There was no evidence of organ damage or any severe impairment as a result of the Claimant's diabetes, thrombocytopenia, and/or any digestive disorder. Although the Claimant did not allege any mental disorders, the consultative evaluation indicates diagnoses of major depression, dysthymic disorder, and post-traumatic stress disorder. Despite these diagnoses, there was no evidence of any marked limitations. The objective medical records establish serious physical impairments for the months of March through August 2011; however, these records do not meet the intent and severity requirements of a listing, or its equivalent. Accordingly, the Claimant cannot be found disabled, or not disabled, at Step 3.

Before considering the fourth step in the sequential analysis, a determination of the individual's residual functional capacity ("RFC") is made. 20 CFR 416.945. An individual's RFC is the most he/she can still do on a sustained basis despite the limitations from the impairment(s). *Id.* The total limiting effects of all the impairments, to include those that are not severe, are considered. 20 CFR 416.945(e).

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 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 to 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 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.

In this case, the evidence shows treatment/diagnoses of acute bronchitis, chronic anxiety, depression, neck and back pain, positive straight leg raise bilaterally, shoulder pain, perforated duodenal ulcer, diabetes, thrombocytopenia, and alcohol abuse. The Claimant testified that she is able to walk short distances; grip/grasp with some difficulties; sit for less than 2 hours; lift/carry approximately 20 pounds; stand less than 2 hours; and is able to occasionally bend but is unable to squat. The objective medical evidence for the period at issue does not contain any specific physical or mentally imposed restrictions. After review of the entire record to include the Claimant's testimony, it is found that the Claimant maintains the residual functional capacity to perform unskilled, sedentary work as defined by 20 CFR 416.967(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 is not considered. 20 CFR 416.960(b)(3).

The Claimant's employment history consists of work as a cashier at a fast food restaurant, an assistant teacher, a day care provider, and as a machine operator. The Claimant testified that as an assistant teacher and daycare provider she was not required to walk and/or stand for extended periods. In consideration of the Claimant testimony and the Occupational Code, the Claimant's prior work as a cashier was considered unskilled light work while her other employment is classified as unskilled sedentary work. If the impairment or combination of impairments does not limit 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 light of the entire record and the Claimant's RFC (see above), it is found that the Claimant was able to return to past relevant work as an assistant teacher and day care provider for the months of March 2011 through August 2011 with the exception of her hospitalization period. Accordingly, the Claimant is found

not disabled at Step 4 for the months at issue with no further analysis required. The SHRT determination is AFFIRMED.

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 Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. 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 disabled for purposes of the MA-P program effective September 2011; therefore, she is found disabled for purposes of SDA benefit program effective September 2011.

The Claimant is found not disabled for the purposes of the MA-P program for the months of March 2011 (retroactive month) through August 2011; therefore, she is found not disabled for purposes of the SDA benefit program for the months of May (application month) through August 2011.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant not disabled for purposes of the MA-P and SDA benefit programs for the months of March through August 2011. The Claimant is found disabled effective September 2011 in accordance with the SHRT determination.

Accordingly, It is ORDERED:

1. The Department's determination that the Claimant was not disabled for the months of March 2011 through August 2011 is AFFIRMED.
2. The Department's determination that the Claimant was not disabled beginning September 2011 is REVERSED.
3. The Department shall initiate processing of the May 19, 2011 application to determine if all other non-medical criteria are met, effective September 2011, and inform the Claimant and her Authorized Hearing Representative of the determination in accordance with Department policy.

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4. The Department shall supplement for any lost benefits (if any) that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy effective September 2011 for MA -P purposes and May 2011 for SDA purposes.
5. The Department shall review the Claimant's continued eligibility in accordance with Department policy in September 2013.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: August 28, 2012

Date Mailed: August 28, 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.

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

Michigan Administrative Hearings
Re consideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

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cc:

