

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-48191
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 14, 2012
County: SSPC

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon the Claimant's request for a hearing made pursuant to Michigan Compiled Laws 400.9 and 400.37, which govern the administrative hearing and appeal process. After due notice, a telephone hearing was commenced on June 14, 2012, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included [REDACTED] [REDACTED]

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 October 2, 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 June 11, 2011, Claimant filed an application for MA-P and Retro-MA benefits alleging disability.
- (2) On November 4, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that her non-severe impairment lacks duration of 12 months, 20 CFR 416.909.
- (3) On March 28, 2012, the department caseworker sent Claimant notice that her application was denied.

- (4) On April 5, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On May 21, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the ability to perform her past work as a cook. (Department Exhibit B, pp 1).
- (6) Claimant is claiming disability based on lumbosacral neuritis, hypothyroidism, osteoarthritis and bilateral carpal tunnel.
- (7) Claimant is a 41 year old woman whose birthday is [REDACTED]. Claimant is 5' 4" tall and weighs 188 lbs. Claimant completed the 12th grade.
- (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 to 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 2006. 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 lumbosacral neuritis, hypothyroidism, osteoarthritis and bilateral carpal tunnel.

On June 3, 2011, Claimant saw her primary care physician for a recheck for complaints of bilateral knee pain. At this time she is complaining of both knees, right greater than the left. She has episodes of swelling and giving way. She has episodes of locking. Examination of the right knee demonstrates a small effusion. She extends fully and flexes to 115 degrees. She is quite tender along the medial joint. Apley's sign is positive medial. McMurray's sign is positive for pain medial. No signs of instability were present. Distal motor and sensory evaluation appears intact without deficit. X-rays of Claimant's left knee revealed a slight asymmetrical narrowing of the medial tibiofemoral joint compartment and

patella spur formation. X-rays of the right knee showed a very slight asymmetrical narrowing of the medial tibiofemoral joint compartment and patella spur formation. The patellofemoral joint compartment was maintained. She was diagnosed with arthritis of the right knee and her right knee was injected with Depo-Medrol and Xylocaine.

On July 27, 2011, an ultrasound of Claimant's breast revealed a 4 mm benign intramammary lymph node 10 o'clock posterior right breast in the area of nodularity on the mammogram. A routine follow-up mammogram in one year was recommended.

On September 23, 2011, Claimant saw her primary care physician complaining of low back symptoms. She is scheduled to see the spine surgeon for evaluation. No examination was performed. She stated that she is doing fair regarding her knees. She was advised she may require knee arthroplasty in the future.

On October 11, 2011, Claimant went to the emergency department and was diagnosed with lumbosacral neuritis. An MRI of the LS-Spine without contrast was normal.

On January 28, 2012, Claimant presented to the emergency department with diarrhea, nausea and vomiting. An IV was started and she was administered Morphine sulfate and Zofran. She was diagnosed with a viral syndrome and discharged on January 29, 2012 in stable condition with a prescription for Vicodin.

On February 23, 2012, Claimant was evaluated by an orthopedic surgeon. She continues to complain of pain about the medial aspect of the knee. Examination demonstrates tenderness along the medial joint line. She has a positive McMurray's sign medially. The findings were consistent with a torn medial meniscus. A diagnostic arthroscopy was recommended.

On April 13, 2012, Claimant went to the emergency room complaining of abdominal pain. Labs were run and were negative. An ultrasound of the abdomen was completed showing a horseshoe kidney without definite evidence of renal calculus or hydronephrosis.

On May 1, 2012, Claimant underwent a diagnostic arthroscopy of her right knee with debridement of the patella. Examination of the medial compartment demonstrates a normal medial meniscus, medial femoral condyle and tibial plateau. Evaluation of the intercondylar notch demonstrates an intact anterior cruciate ligament. Evaluation of the lateral compartment demonstrates a normal lateral meniscus, lateral femoral condyle and tibial plateau. Evaluation of the patellofemoral articulation demonstrates grade II changes involving the central area of the patella utilizing the intraarticular shaver followed by the ablation and debridement of the patella was performed.

On May 10, 2012, Claimant had an electrodiagnostic evaluation for numbness in both hands. The evaluation revealed delayed distal latency of the median nerve on both sides. Also, the mixed nerve is slightly delayed. The median nerve is worse on the right, indicative of entrapment of the median nerve on both sides, compatible with bilateral carpal syndrome, right side being slightly worse.

On May 14, 2012, Claimant was seen postoperatively, following her arthroscopic procedure. All portals are benign. She has a small effusion. She extends fully and flexes to 95 degrees. Quadriceps strengthening exercises were recommended as well as activities as tolerated. She does not have a severely degenerative patella, which may be problematic in the future.

On May 31, 2012, Claimant returned to the orthopedic surgeon for follow-up on her knee surgery. She is continuing to have pain with her knee. She also has pain in her low back. She continues to have pain in her hands bilaterally. She has been evaluated for possible breast reduction for helping with her back pain. Examination shows her to be alert and oriented. There are no cranial nerve abnormalities. There is decreased pinprick distribution medially bilaterally. Reflexes are not tested in the lower extremities, but are symmetrical otherwise. She was diagnosed with bilateral carpal tunnel syndrome and back pain.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). In the present case, Claimant testified that she had knee surgery, carpal tunnel and arthritis in her back. Based on the lack of objective medical evidence that the alleged impairment(s) are severe enough to reach the criteria and definition of disability, Claimant is denied at step 2 for lack of a severe impairment and no further analysis is required.

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/Retro-MA benefit programs. Accordingly, it is ORDERED that the Department's determination is **AFFIRMED**.

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

Date Signed: October 22, 2012

Date Mailed: October 22, 2012

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 mailing date of the rehearing decision.

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