

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

IN THE MATTER OF:

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Reg. No.: 2012 52019
Issue No.: 2009
Case No.: ██████████
Hearing Date: August 6, 2012
DHS County: Oakland (04)

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, an in person hearing was held in Pontiac, Michigan, on August 6, 2012. The Claimant appeared and testified. ██████████ a witness, appeared on behalf of the Claimant. ██████████, ██████████, ██████████, ██████████, the Claimant's Authorized Hearing Representative, also appeared. ██████████, 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") benefit program?

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 benefits and retroactive medical assistance (August 2011) on November 10, 2011.
2. On March 29, 2012, the Medical Review Team ("MRT") found the Claimant not disabled.
3. The Department notified the Claimant of the MRT determination on April 10, 2012.

4. On April 30, 2012, the Department received the Claimant's timely written request for hearing.
5. On June 18, 2012 the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued on August 6, 2012 and February 25, 2013 to obtain new medical evidence and updated medical examinations. The new evidence was submitted to the State Hearing Review Team on April 15, 2013.
7. On June 18, 2013 the State Hearing Review Team found the Claimant not disabled.
8. The Claimant alleges physical disabling impairments of low back pain which radiates to both legs.
9. The Claimant has alleged mental disabling impairments due to depression.
10. At the time of hearing, the Claimant was ■ years old with a ■ birth date. The Claimant is now ■ years of age. Claimant is 4'11.5" in height; and weighed 144 pounds.
11. The Claimant has a high school education and has a cosmetology license. The Claimant has an employment history working as a hairdresser.
12. The Claimant's impairments have lasted or are expected to last 12 months in duration.

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, 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 Manual ("BRM").

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 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, the Claimant is not involved in substantial gainful activity and, 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;
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).

The Claimant alleges physical disabling impairments due to low back pain radiating to both legs.

The Claimant has alleged mental disabling impairments due to depression.

A summary of the medical evidence follows.

On [REDACTED] the Claimant was seen in the emergency room requesting medical assistance due to vicodin withdrawal and discharged the same day in stable condition; the diagnosis was Vicodin withdrawal. The notes indicate that she was asking for "benzos" while in the Emergency Department.

On [REDACTED] the Claimant presented to the emergency room stating that she had been over medicating with her Klonopin. The diagnosis was acute major depression with suicidal ideation and withdrawal from Klonopin which was prescribed. A drug test was performed which was positive for benzodiazepines on admission. The Claimant was evaluated during the hospitalization by the psych social worker.

On [REDACTED] the Claimant was in the emergency room and testing was positive for opiates and benzodiazepines. The report notes vicodin overdose which was confirmed by drug testing while in the hospital. The Claimant reported that she is addicted to vicodin and did not want to live anymore. She admitted to taking approximately 100 vicodin over the last 10 days. At the time she was seen she had no other complaints. Poison control was consulted regarding toxicity due to ingestion of vicodin. The Claimant was admitted in stable condition. Final impression was chronic acetaminophen overdose and depression with suicidal ideation. The Claimant did report back pain with pain 8/10. The report also notes that the Claimant took over 30 Klonopin in the last week. The impression and plan was diagnosis drug overdose vicodin, acute low back pain. The Claimant was admitted for a two day stay.

A Consultative Medical Exam Report was completed on [REDACTED] with a DHS 49. The consultative doctor evaluated the Claimant indicating that she could occasionally lift 10 pounds, could stand or walk less than 2 hours in an 8 hour work day, and could not

perform pushing or pulling with either of her hands/arms and could operate foot/leg controls. The exam notes indicate that Claimant indicated a pain level of 10 out of 10 and indicated no radiating pain down her legs. The notes indicated that the Claimant took no vicodin for pain. Claimant ambulated without difficulty. The examiner noted under musculoskeletal revealed tenderness on palpation from lower ribs on T spine to lumbar. Patient had full range of motion in both hips. Straight leg raising was positive at 40-50 degrees bilaterally. Limited range of motion of the spine at both flexion and extension secondary to pain in lower back area. Assessment was: Lumbar radiculopathy, lumbar scoliosis, high blood pressure hyperlipidemia, and depression. The patient did not appear in any acute discomfort with movement at this moment. The Patient will benefit from the pain medication. Patient is able to function at her home and helping her husband at this moment without too much discomfort without any pain medication. An x-ray of the spine noted impression narrowing of the facet joint at L4-L5 and L5-S1, and degenerative arthritis of the lumbar spine.

A Consultative psychological examination was performed [REDACTED]. At the examination, the examiner noted that the Claimant advised that she was taking vicodin at that time and last took them 2 days ago. The exam notes under daily activities that the Claimant helps friends in her apartment with household chores and in return her friends give her vicodins. The Examiner further noted that if someone gives her prescription pills she abuses them. The summary/impression was long history of chronic prescription drug use. She continues to live a reckless life of her own choosing. What is more troublesome is that she feels that taking vicodin is not a serious matter because she is taking less than 30 pills a day. One of her wishes is to "get more vicodins". She is cognitively intact and manipulative in many ways. Her back problems and suicide attempts are attention seeking behaviors. If she was serious about hurting herself, she would have found a way to do it by now. In my opinion Claimant is chronically addicted to prescription medications and because of her addiction would do anything to find drugs. Diagnosis was sedative, hypnotic or anxiolytic abuse, GAF score was 65. The ability to relate to others including fellow workers and supervisors is within normal limits. Claimant assessed as having the mental ability to carry out simple repetitive tasks as well as complex tasks, and would have little or no difficulty with familiar routine tasks. Concentration, persistence and pace to perform routine tasks within normal range. Ability to withstand stress associated with day-to-day work activity is in normal range. Claimant has ability to manage her own funds but may misuse her money to support her drug addiction. The Mental Residual Functional Capacity Assessment found no evidence of limitation in any of the 20 categories.

Throughout [REDACTED] the Claimant was seen by a community mental health organization beginning in [REDACTED] and also in [REDACTED] based upon the records available. The Claimant's GAF score is consistently 58 and the diagnosis is major depressive disorder recurrent, unspecified and opioid

dependence. An Interim Order was issued ordering that a DHS 49 D and 49E be obtained. The request for the completion of the mental evaluation was not received as ordered and no current treatment records updating the Claimant's treatment were provided.

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 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 minimis* 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.

Listing 1.04 Disorders of the Spine was reviewed and it was found that the Claimant did not meet the listing as no finding of stenosis or radiculopathy was present on the MRI evaluation.

Listing 12.04 Major Depressive Disorder was also considered but in light of the Claimant's treating psychiatrist's evaluation indicating a GAF score of 58 and the consultative examination which was not given as much weight, the objective medical evidence indicates that the Claimant had no marked restrictions and, therefore, it is determined that the listing was not met.

The fourth step in analyzing a disability claim requires an assessment of the claimant's 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 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 (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 Claimant's prior work history consists of employment as a hairdresser. This work would be considered semi-skilled light work. This job requires standing much of the day and leaning over a shampoo bowl and use of hands and arms to perform the work. Therefore, in light of the Claimant's testimony and records, and in consideration of the Occupational Code, the Claimant's prior work is classified as semi-skilled, light work. The Claimant's skills are non-transferable.

The Claimant credibly testified that she can stand 20 minutes and can sit only 20 minutes due to back pain, and is not able to walk any significant distance, about 1 block, due to pain. Although she can drive she drives only short distances due to fear. The Claimant has back pain which has been severe at times 8/10. Claimant further credibly testified that she can lift only 5 to 10 pounds and she cannot bend at waist. The independent consultative examination found that Claimant could occasionally lift 10 pounds, could stand or walk less than 2 hours in an 8 hour work day, and could not perform pushing or pulling with either of her hands/arms and could operate foot/leg controls and noted that there was positive straight leg raising bilaterally, and degenerative arthritis in Claimant's back. An x-ray of the spine noted impression narrowing of the facet joint at L4-L5 and L5-S1, and degenerative arthritis of the lumbar spine.

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 consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is not able to return to past relevant work; thus, the fifth step in the sequential analysis is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). The Claimant is ■ years old and, thus, is considered to be a person of advanced age for MA purposes. The Claimant has a high school education, and a cosmetology license. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual

capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

In this case the evidence reveals that the Claimant complains of back pain and is diagnosed with degenerative arthritis of the spine. The consultative examination confirmed lower back problems confirmed by x-ray and positive straight leg raising bilaterally, and thus placed the Claimant at a less than sedentary level consistent with the back pain the Claimant experiences. The Claimant's mental impairments have existed for several years and arise out of depression and drug addiction to prescription medications which at the time of the hearing she was not abusing. However, a statement regarding materiality is necessary as the Claimant has several hospital admissions for vicodin abuse and potential overdose. In analyzing whether drug use is material, it is determined that although the Claimant has serious past addiction to prescription medications, is currently in remission and has sought psychiatric treatment, it is found that the Claimant's degenerative back condition would continue to persist notwithstanding the potential for continued prescription drug abuse.

In this case the evidence and objective findings reveal that the Claimant suffers low back pain, with degenerative arthritis and is a person of approaching retirement age with a semi-skilled employment history.

The objective medical evidence provided by the consultative examination places the Claimant at the less than sedentary activity level, however it is determined that the Claimant, based upon her testimony provided at the hearing, is capable of many activities of daily living and can perform sedentary work. In consideration of the foregoing and in light of the objective limitations, it is found that the Claimant retains the residual functional capacity for work activities on a regular and continuing to meet at the physical and mental demands required to perform sedentary work in 20 CFR 416.967(b).

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 201.04, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

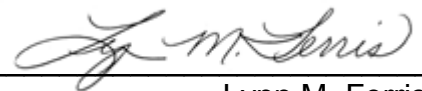
In this case, the Claimant is found disabled for purposes of the MA-P program at Step 5.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant disabled for purposes of the MA-P.

Accordingly, It is ORDERED:

1. The Department is ordered to initiate processing of the Claimant's MA-P, and Retro MA-P (August 2011) dated November 10, 2011 and award required benefits, provided Claimant meets all non-medical eligibility requirements.
2. The Department shall initiate review of the Claimant's disability case in August 2014 in accordance with Department policy.



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

Date Signed: August 2, 2013

Date Mailed: August 2, 2013

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.

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