STATE OF MICHIGAN

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

IN THE MATTER OF:

Reg No.: 2012-60662
Issue No.: 2009, 4031
Case No.:
Hearing Date: October 4, 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 telephone hearing was conducted from Detroit, Michigan on Thursday, October 4, 2012. Claimant appeared, along with Cynthia Lockhart, and testified. Participating on behalf of the Department of Human Services ("Department") was .

During the hearing, 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. The SHRT found Claimant disabled as of October 2012. 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. Claimant submitted an application for public assistance seeking MA-P benefits on May 18, 2012.

2. On June 20, 2012, the Medical Review Team ("MRT") found Claimant not disabled. (Exhibit 1, pp. 1, 2)

3. The Department notified Claimant of the MRT determination.

4. On June 26, 2012, the Department received Claimant's timely written request for hearing.

5. On August 7, 2012 and January 18, 2013, the SHRT found Claimant not disabled. (Exhibit 2)

6. Claimant alleged physical disabling impairments due to bilateral leg pain, hip pain, knee pain, low back pain, and hearing loss.

7. Claimant alleged mental disabling impairments due to depression

8. At the time of hearing, Claimant was 49 years old with an [redacted], birth date; was 5'3" in height; and weighed 157 pounds.

9. Claimant is a high school graduate with vocational training as a nursing assistant, with an employment history as a patient care assistant.

10. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

As a preliminary matter, the Social Security Administration's ("SSA") initial determination found Claimant disabled as of her 50th birthday in October 2012. Based on this finding, the SHRT found Claimant disabled as of October 2012. As such, this decision addresses the time from the May 18, 2012 application date through September 2012.

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-relate 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 applicants 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).

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a). First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1). When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2). Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.;* 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3). The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d). If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR 416.920a(d)(2). If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3).

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 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 bilateral leg pain, hip pain, knee pain, low back pain, hearing loss, and depression.

On June 14, 2011, Claimant sought treatment for bilateral knee pain. X-rays of the left knee showed mild spurring of the medial joint line with minimal joint space narrowing. Conservative treatment (physical therapy, pain medication, and injections) was recommended.

On November 14, 2011, Claimant attended an appointment for knee pain. An MRI showed damage to the lateral facet of the trochlea with severe damage to the undersurface of the patella and subchondral cyst formation along with inflammation in the subchondral bone of the lateral facet. The diagnosis was valgus deformity.

On December 20, 2011, Claimant underwent extensive knee surgery without complication. The post-operative diagnoses were valgus deformity, patellofemoral mal-alignment, and degenerative arthritis.

On December 29, 2011, Claimant attended an appointment following an osteotomy of the right knee. X-rays showed "perfect" alignment and Claimant was to remain non-weight bearing.

On January 4, 2012, Claimant began physical therapy. Claimant was to go 3 times a week for 4 to 6 weeks.

On February 13, 2012, Claimant attended a follow-up appointment. X-rays showed bone callus forming along with "perfect" positioning of hardware. Claimant could begin weight bearing.

On February 29th, 4 weeks of physical therapy was recommended.

On March 26, 2012, Claimant attended a follow-up appointment. Claimant was progressing well and the removal of the hardware was discussed. X-rays revealed increasing callus formation at the osteotomy site, knee joint effusion, and degenerative spurring.

On April 2nd, Claimant attended a physical therapy with continued complaints of pain.

On April 25, 2012, Claimant was discharged from therapy. Claimant was able to ambulate with a cane but continued to have complaints of pain with reduced range of motion. Removal of hardware was recommended.

On this same date, Claimant sought a second opinion regarding her continued right knee pain. The completed report was not submitted thus the impressions are not known.

On April 26, 2012, Claimant attended a follow-up appointment where it was found the osteotomy was healed. Removal of the hardware was discussed/recommended which would allow Claimant to be able to walk, bear weight, and return to her employment.

On this same date, imaging studies showed incorporated corrective osteotomies.

On May 8, 2012, Claimant sought treatment for right leg pain. The physical examination revealed pain on palpitation of the right knee. X-rays were normal. Claimant was to continue with pain medication and physical therapy. The hardware was to be removed.

On May 10, 2012, x-rays of the right new revealed healing distal femoral osteotomy, stable proximal tibial osteotomy, intact hardware, and no suprapatellar joint effusion.

On May 29, 2012, a Medical Examination Report was completed on behalf of Claimant. The current diagnosis was painful hardware from osteotomy. Removal of hardware was scheduled for June 27, 2012. The Claimant was found able to meet her needs in the home.

On June 21, 2012, images of the right knee revealed osteopenia without obvious bone destruction. In addition to knee pain, Claimant was diagnosed with cellulitis.

On September 14, 2012, Claimant attended a consultative evaluation with a chief complaint of right knee pain. Claimant was unable to heel walk, toe walk, and tandem walk and required and assistive device for ambulation. Claimant was limited in her ability to carry, push, and pull. Claimant's right leg was 2" shorter than the left resulting in moderate limitations on standing and walking secondary to pain. Bending, stooping, squatting and climbing stairs is limited secondary to pain. The impression was ongoing right knee pain, status post osteotomy with plating.

On November 5, 2012, Claimant was treated for and diagnosed with knee and hip pain.

On November 7, 2012, a Medical Examination Report was completed on behalf of Claimant. The current diagnoses were right knee pain, shorter limb on right, and abnormal gait. Claimant's condition was deteriorating and she was found unable to lift/carry any weight; stand and/or walk less than 2 hours in an 8-hour workday; sit less than 6 hours in an 8 hour workday; and able to perform simple grasping with both upper extremities and perform repetitive actions with her right upper extremity. Claimant was found unable to operate foot/leg controls. Claimant was found unable to meet her needs in the home.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented medical evidence establishing that she does have some physical limitations on her ability to perform basic work activities. There was no evidence of any mental impairment. The medical evidence has established that the 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 Claimant's impairment, or combination of impairments, is listed in

Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms ongoing knee and hip pain status post osteotomy.

Listing 1.00 defines musculoskeletal system impairments. Disorders of the musculoskeletal system may result from hereditary, congenital, or acquired pathologic processes. 1.00A. Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases. 1.00A. Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. 1.00B2b(1). Ineffective ambulation is defined generally as having insufficient lower extremity function to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general definition because the individual has the use of only one upper extremity due to amputation of a hand.) *Id.* To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. 1.00B2b(2) They must have the ability to travel without companion assistance to and from a place of employment or school. . . . *Id.*

Categories of Musculoskeletal include:

1.02 Major dysfunction of a joint(s) due to any cause: Characterized by gross anatomical deformity (e.g. subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

- A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively as defined in 1.00B2b; or
- B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, wrist, hand), resulting in inability to perform fine and gross movements effectively a defined in 1.00B2c

1.03 Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint, with inability to ambulate effectively, as defined in 1.00B2b, and return to effective ambulation did not occur, or is not expected to occur, within 12 months of onset.

In this case, the evidence shows that Claimant had surgery to her right knee in December 2011. Despite adherence to prescribed treatment which includes pain medication, physical therapy, and injections, Claimant continued to suffer with joint pain (and hip pain) and was unable to effectively ambulate absent an assistive device. Claimant right leg is approximately 2" shorter than her left which results in limitations on standing and walking. In November 2012, Claimant's physician found Claimant's condition was deteriorating noting she was unable to lift/carry any weight; stand and/or walk less than 2 hours; and sit for less than 6 hours. Imaging studies confirm knee joint effusion, degenerative spurring, and reduced range of motion. Ultimately, the evidence shows major knee joint dysfunction and chronic pain, with the inability to ambulate effectively. Claimant's impairments meet, or are the medical equivalent thereof, a listed impairment as detailed above. Accordingly, Claimant is found disabled at Step 3 with no further analysis required.

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program purusant 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 impariment 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; therefore, she is found disabled for purposes of SDA benefit program.

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 and SDA benefit programs.

Accordingly, It is ORDERED:

1. The Department's determination is REVERSED.

2. The Department shall initiate processing of the May 18, 2012 application to determine if all other non-medical criteria are met and inform the Claimant of the determination in accordance with Department policy.

3. The Department shall supplement for any lost lost benefits (if any) that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.

4. The Department shall review the Claimant's continued eligibility in accordance with Department policy in July 2014.

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

Date Signed: June 5, 2013

Date Mailed: June 6, 2013

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.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CMM/tm

cc: