

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-61351
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: October 4, 2012
County: Cheboygan

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon 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 October 4, 2012, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [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 January 15, 2013, 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 April 10, 2012, Claimant filed an application for MA-P and Retro-MA benefits alleging disability.
- (2) On June 7, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating she had a non-severe impairment. (Department Exhibit A, pp 38-39).
- (3) On June 11, 2012, the department case worker sent Claimant notice that her application was denied.

- (4) On June 19, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On August 2, 2012, the State Hearing Review Team (SHRT) found there was no medical evidence of record that documents a mental/physical impairment that significantly limits Claimant's ability to perform basic work activities. (Department Exhibit B).
- (6) Claimant has a history of anemia, epilepsy, and gastroesophageal reflux disease (GERD).
- (7) Claimant is a 56 year old woman whose birthday is [REDACTED] Claimant is 5'6" tall and weighs 170 lbs. Claimant completed a high school equivalency education.
- (8) Claimant had not applied for Social Security disability benefits at the time of the hearing.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, (DHS or department), pursuant to MCL 400.10 *et seq.* and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed

to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Claimant is not involved in substantial gainful activity and testified that she works part-time as a housekeeper, working 15-20 hours per week in the summer and only 4 hours a week in the winter. 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 anemia, epilepsy, and gastroesophageal reflux disease (GERD).

On April 9, 2012, Claimant followed up with her primary care physician regarding her cystitis and macrocytic anemia. Claimant does not feel well, she feels very tired, more tired each day. Her legs ache all the time when she is lying down, "as soon as she lies down," ever since veins were stripped. Her physician explained to her that she had severe anemia last time and she was supposed to come in 6 months after the last visit. Money is her issue. Her physician did not know why Claimant was anemic, although she suspected bleeding but it had been undetermined where the bleeding was coming from and Claimant cannot afford a referral. Now Claimant is back where she started a year ago.

On April 20, 2012, Claimant went to the emergency department complaining of weakness and shortness of breath. She was hospitalized last year for iron deficiency anemia and was given a transfusion, an EGD, and colonoscopy. According to her report the results were unremarkable. Her physician ran a hemoglobin test this week and it was found to be 7.7. A review of her old medical records from last year showed she was a 7 upon presentation and her hemoglobin went up to 10.8. A hemoglobin was run and was 8.9, but she had hovered in the past at 9.2, 10 and 10.8 was the highest she was last year, therefore, the examining physician opined that this was not a significant drop. A pulmonary embolism was not suspected based on testing results. The etiology for her generalized weakness was unclear. She also stated that she felt

like she was going to have a seizure because she felt lightheaded and that was her biggest concern and why she presented to the ED. Her Tegretol level was obtained and that was 6.9, therapeutic. She felt comfortable going home. The physician opined that she was certainly symptomatic for anemia in the differential but did not require a transfusion at this time, but would require close follow-up by her physician and a repeat hemoglobin in three days.

On April 23, 2012, Claimant saw her physician for a kidney infection. Claimant had been to the emergency room with severe back pain. A UA was completed which came back normal. She was still having back and abdominal pain. She was having frequent urination with no burning. She had two drops of urine come out and then severe pain started. She does have suprapubic tenderness noted and some mild tenderness of her lower back to palpation. Her urine had small white blood cells, nitrate positive with trace blood. Microscopic exam noted both red and white blood cells. She was prescribed Cipro and instructed to return in three days for a recheck, but if her symptoms worsened, she was to go to the emergency room.

On April 26, 2012, Claimant returned to her physician for a recheck of urinary tract infection. Claimant still had mild discomfort over suprapubic region and left paraspinal muscles in the lumbar region. Her urine revealed small leukocytes, otherwise it was normal. On microscopy no red blood cells were noted, only a few white blood cells were found. No epithelial cells were visualized. The urinary tract infection was unresolved and she was given a lengthened course of Cipro.

On May 1, 2012, Claimant returned to her physician for a medication refill and CBC check. She was still having a lot of tiredness. A review of her chart showed she was severely anemic and her hemoglobin has gradually been going up. She had not noticed any blood in her stools. She had only one episode of significant heartburn that was helped by some additional antacids. She has an ongoing problem with her legs that she sees another doctor for. She is still waiting to get social services to get her on some type of medical coverage before doing anything diagnostic. She stated that other members of her family also have anemia and they have been unable to find the cause. The Niferex and Prevacid were refilled. She was instructed to return in one month for a repeat CBC, or sooner if she was getting worse or noticed any black tarry stools or threw up any blood or noticed any blood in her urine or unusual bruising or rashes.

On May 18, 2012, Claimant underwent a medical examination on behalf of the department. Claimant was diagnosed with anemia and GERD. The examining physician opined that Claimant's condition was stable and she was able to meet her own needs in the home.

On August 16, 2012, Claimant returned to her physician as her symptoms had started a couple of days ago, but yesterday the burning with urination began. She was unable to go much at all when she tried to urinate. She had the frequency, but produced little amounts. There was no blood in the urine. She had low back pain and slight low abdominal pain. She had never had urinary tract infections until the last few times. Three months ago she had a urinary tract infection as well and was treated with Cipro. A urinalysis was performed which was positive for red and white blood cells and a few

epithelial cells. The urine was sent out for culture and she was placed on Macrobid and given Pyridium. She was instructed that if the symptoms persisted for more than 2-3 days, to notify them or if she experienced any fever, chills, or back pain, she needed to go in right away for risk of kidney infection.

On October 3, 2012, Claimant's primary care physician submitted a written letter that documented that Claimant had been seen by her physician 7 times since 4/13/11 regarding her anemia. Claimant had also had two hospitalizations in that time, the first of which was 4/25/11, when her HGB was 5.6 and she needed a blood transfusion. She also had an endoscopy and colonoscopy at that time, both were within normal limits. She was referred to hematology for further evaluation but was unable to afford a visit with a specialist. She had a history of epilepsy, GERD, hiatal hernia and anemia of undetermined etiology. Her most recent HGB was done on 10/1/12 and was within normal limits.

On October 9, 2012, Claimant's neurologist wrote a letter that he had been treating her for a seizure disorder since 1999 and during that interval of time she had had no seizures. She was maintained on Carbamazepine to control her seizures and although she had occasional auras in the past, she had had none in the last year. She tolerated the medication well with no side effects. In addition, her complete neurologic exam has always been entirely within normal limits.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Claimant has presented some limited medical evidence establishing that she does have some physical limitations on her ability to perform basic work activities. The medical evidence has established that Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Claimant has alleged physical and mental disabling impairments due to anemia, epilepsy, and gastroesophageal reflux disease (GERD).

Listing 7.00 (hematological disorders) and Listing 11.00 (neurological) were considered in light of the objective evidence. Based on the foregoing, it is found that Claimant's impairment(s) does not meet the intent and severity requirement of a listed impairment; therefore, Claimant cannot be found disabled at Step 3. Accordingly, Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the individual's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for

the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s) and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity to the demands of past relevant work must be made. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (e.g., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only

affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

Claimant's prior work history consists of work as a part-time housekeeper for the past 35 years. In light of Claimant's testimony, and in consideration of the Occupational Code, Claimant's prior work is classified as unskilled, medium work.

Claimant testified that she is able to walk short distances and can lift/carry approximately 8 pounds, the weight of a gallon of milk. The objective medical evidence notes no limitations. If the impairment or combination of impairments does not limit an individual's 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. Claimant testified that she is still working and is therefore able to return to past relevant work. However, Step 5 of the sequential analysis will be completed.

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). At the time of hearing, Claimant was 56 years old and was, thus, considered to be of advanced age for MA-P purposes. Claimant has an equivalent high school education. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from Claimant to the Department to present proof that 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). The age for younger individuals (under 50) generally will not seriously affect the ability to adjust to other work. 20 CFR 416.963(c).

In this case, the evidence reveals that Claimant suffers from anemia, epilepsy, and gastroesophageal reflux disease (GERD). The objective medical evidence notes no limitations. In light of the foregoing, it is found that Claimant maintains the residual functional capacity for work activities on a regular and continuing basis which includes the ability to meet the physical and mental demands required to perform at least light work as defined in 20 CFR 416.967(b). After review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 202.04, it is found that Claimant is disabled for purposes of the MA-P program at Step 5.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining Claimant is not currently disabled for MA/Retro-MA and SDA eligibility purposes.

Accordingly, the department's decision is **REVERSED**, and it is ORDERED that:

1. The department shall process Claimant's April 10, 2012, MA/Retro-MA application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.
2. The department shall review Claimant's medical condition for improvement in February, 2014, unless her Social Security Administration disability status is approved by that time.
3. The department shall obtain updated medical evidence from Claimant's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

It is SO ORDERED.

/s/

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

Date Signed: February 7, 2013

Date Mailed: February 7, 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.

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

VLA/las

cc:

