

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

IN THE MATTER OF:

[REDACTED]

Reg No.: 2012-65460
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: November 7, 2012
Oakland County DHS (02)

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 conducted from Madison Heights, Michigan on Wednesday, November 7, 2012. The Claimant appeared and testified. [REDACTED] a witness also appeared on Claimant's behalf. [REDACTED] the Claimant's Authorized Hearing Representative, also appeared. [REDACTED], Assistance Payments Worker, appeared on behalf of the 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 and retro MA -P (November 2011) on February 28, 2012.
2. On April 30, 2012, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1)
3. On April 30, 2012, the Department notified the Claimant of the MRT decision.

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4. On July 13, 2012, the Department received the Claimant's timely written request for hearing.
5. On September 7, 2012, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 3)
6. An Interim Order was issued on November 14, 2012 to accept new evidence submitted by the Claimant at the hearing and ordering the Department to obtain an eye examination, and ordered an evaluation be provided by the Claimant's primary care physician.
7. The new evidence received by the undersigned was submitted to SHRT on February 11, 2013.
8. On April 15, 2013 the SHRT found the Claimant not disabled.
9. The Claimant alleged physical disabling impairments due to type II diabetes, rheumatoid arthritis, lupus, osteopenia of left wrist, hypertension and acute renal failure, hiatal hernia, and recurrent abdominal pain and carpal tunnel syndrome in both wrists.
10. At the time of hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth date; was 5'3 1/2" in height; and weighed 160 pounds.
11. The Claimant completed the 11th grade. The Claimant has an employment history working at a fast food restaurant preparing food.

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 of Human Services ("DHS"), formerly known as the Family Independence Agency, pursuant to MCL 400.10 *et seq* and MCL 400.105. Department policies are found in the Bridges Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Bridges Reference Tables ("RFT").

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a) The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical

assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 416.913 An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927

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

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

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

provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6)

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant just began working full-time through a temporary agency. Given that this employment is new, thus it is unclear whether this will be a failed work attempt, it will not be considered substantial gainful activity. Accordingly, the Claimant is found 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 F 2d 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).

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In the present case, the Claimant alleges disability due to type II diabetes, rheumatoid arthritis, lupus, osteopenia of left wrist, hypertension and acute renal failure, hiatal hernia, and recurrent abdominal pain and carpal tunnel syndrome in both wrists.

The Claimant alleges mental disabling impairments due to mood swings.

A summary of the medical evidence presented follows.

An eye examination report was performed by [REDACTED] and determined that Claimant's vision with correction was 20/30 in right eye for distance and 20/20 near vision. The left eye was 20/50 distance and 20/30 near vision. The Claimant also had cataracts in both eyes. The recommendation was spectacle correction. No retinopathy was detected. The report noted that with cataract surgery prognosis was excellent.

The Claimant was hospitalized for nausea and vomiting and abdominal pain on [REDACTED]. A physical examination revealed abdominal pain and diarrhea, nausea and vomiting and general myalgias. The impression was abdominal pain, non-specific stomach wall thickening, acute renal failure, nausea and vomiting and leukocytosis. Testing revealed Claimant's esophagus was normal after testing. A view of the Claimant's left wrist was taken and showed the bone was intact with no fracture or mal alignment, no degenerative changes were detected. The bones were diffusely osteopenic. Conclusion was definite osteopenia. No discharge record or final report was submitted.

On [REDACTED] Claimant was seen in the hospital with abdominal pain in right lower quadrant and left lower quadrant. The claimant also reported nausea and vomiting. A CT scan of the abdomen was performed and findings were no acute abdominal or pelvic pathology, with a note, "No explanation for the Claimant's symptoms". The Claimant was not admitted. The claimant was discharged after review of testing and examination with no symptoms in stable condition. The hospital treatment reviewed gastritis, gastroenteritis, acute appendicitis, diverticulitis, ulcerative colitis, Crohn's disease, small bowel obstruction, biliary colic, cholecystitis, hepatitis, intra abdominal abscess, urinary tract infection, cystitis, urolithiasis and abdominal aortic aneurysm as possible cause of abdominal pain.

The Claimant was also admitted on [REDACTED] for a one day stay due to abdominal pain and vomiting. The records submitted were not complete, no discharge summary was provided and the records were handwritten and not readable for the most part.

The Claimant was seen regularly throughout [REDACTED] for her type II diabetes and hypertension. Both these conditions were not controlled and Claimant was being seen

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to get the conditions under control. At the hearing the Claimant testified that her diabetes was now controlled. A [REDACTED] radiology report notes that the Claimant's esophagus barium swallow was normal, no hiatal hernia, or gastroesophageal reflux identified.

The Claimant was hospitalized on [REDACTED] for abdominal pain with nausea and vomiting. The treatment notes indicate this is not an emergent condition and may be gastritis and that Claimant had not as yet obtained the medication prescribed. The Claimant was discharged home in stable condition.

The Claimant was again seen in the emergency room on [REDACTED] with abdominal pain, nausea and vomiting. The Claimant was discharged in stable condition with diagnosis of acute gastritis.

A voluminous amount of lab test results were submitted as new evidence and were reviewed. The lab test results were not interpreted as they were part of hospital records.

Six color photos were submitted as part of the medical records from [REDACTED] which were submitted to substantiate lupus. No medical diagnosis for lupus was contained in the medical records.

The Interim Order issued in this case ordered that the Claimant's primary care doctor complete a DHS 49 but the form was not provided.

There were no further medical records submitted.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). The medical records that were submitted were fully reviewed. As summarized above, the Claimant has presented several hospitalizations over a two year period resulting in short hospital stays or emergency treatment only and which resulted in the Claimant being discharged home in stable condition. The Symptoms were nausea and vomiting with abdominal pain. The Claimant had a diagnosis of osteopenia in her left wrist, but no degenerative changes. The photos submitted to substantiate lupus without a medical diagnosis do not establish lupus. No carpal tunnel syndrome was established by any of the medical records. The Claimant testified at the hearing that her diabetes and hypertension were controlled with medication. The medical records did not establish acute renal failure, hiatal hernia, or a diagnosis of rheumatoid arthritis.

The medical records also were devoid of any medical reports documenting mental impairment due to mood swings, nor was any objective medical evidence of mental impairment presented.

Ultimately, the medical evidence does not establish that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Accordingly, the Claimant's impairment(s) is considered non-severe; thus, the Claimant is found not disabled at Step 2 with no further analysis required.

Assuming arguendo that further analysis was necessary even in light of the above Step 2 determination that Claimant is not disabled, a Step 3 analysis of the Social Security Listings was made. The following Listings were reviewed in light of the objective medical evidence presented. Listings 14.00 Immune Systems Disorders; 9.00 Endocrine Disorders; 5.00 Digestive System Disorders, 6.00 Genitourinary Impairments; 1.02 Major dysfunction of a Joint(s) (due to any cause); and 12.04 Affective Disorders and 12.06 Personality Disorder were reviewed, and it is found that none of the listings were met and were not supported by the objective medical evidence presented.

Assuming arguendo that further analysis was necessary, in light of the finding that Claimant was not disabled at Step 2 as the objective medical evidence presented did not establish a severe impairment(s), and the Step 3 analysis that Claimant's impairments did not meet the requirements of the Social Security Listings,, a Step 4 analysis is made below.

The fourth step in analyzing a disability claim requires an assessment of the claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy 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 e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) 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 necessarily 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 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

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regulations, giving consideration to the rules for specific case situations in Appendix 2.
Id.

The Claimant's prior work history consists of working in a fast food restaurant preparing food. In this job Claimant prepared breakfast meals, salads and parfaits and was on her feet during her work. The job would be classified as light work as the Claimant did not indicate that lifting of heavy objects was required during her testimony. In light of the Claimant's testimony and records, and in consideration of the Occupational Code, the Claimant's prior work is classified as unskilled light work.

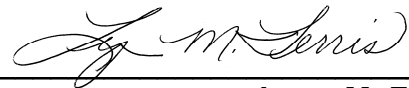
The Claimant testified that she could stand only 15 to 20 minutes and walk only one half block. The Claimant indicated that she could sit only 30 minutes and could shower and dress herself sometimes. The Claimant indicated that she could tie her shoes with difficulty and that her legs, particularly on the left, give out and that she must keep her feet elevated. The Claimant also testified that her left hand hurts and that she has limited use of her left hand. Although the Claimant testified to the above limitations and restrictions, in light of the objective medical evidence presented in this matter, the limitations are not supported by the medical evidence presented. Thus it is determined that the Claimant would be capable of performing past relevant work based upon the evidence presented and thus would also be found not disabled at Step 4.

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 benefit program.

Accordingly, it is ORDERED:

The Department's determination is AFFIRMED.



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

Date Signed: May 8, 2013

Date Mailed: May 8, 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 affect the substantial rights of the claimant:
 - 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

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cc:

