

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-71459
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: November 27, 2012
County: Monroe

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, an in-person hearing was commenced on November 27, 2012, at DHS in Monroe County. Claimant, represented by [REDACTED] personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED] | [REDACTED]

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 January 27, 2012, Claimant filed an application for MA-P and Retro-MA benefits alleging disability.
- (2) On April 24, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating claimant was capable of performing other work pursuant to 20 CFR 416.920(f). (Depart Ex. A, pp 4-5).
- (3) On May 23, 2012, the department case worker sent Claimant notice that her application was denied.
- (4) On August 15, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On October 1, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform light exertional tasks of a simple and repetitive nature. (Depart Ex. B, pp 1-7).
- (6) Claimant has a history of renal colic, hydronephrosis, vesicoureteral reflux, nephrolithiasis, thyroid issues, gastroesophageal reflux disease, depression, osteoarthritis, hepatitis C, and diabetes.
- (7) Claimant is a 48 year old woman whose birthday is [REDACTED]. Claimant is 5'7" tall and weighs 180 lbs. Claimant completed the 10th grade.
- (8) Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

CONCLUSIONS OF LAW

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

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

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

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

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

As outlined above, the first step looks at the individual's current work activity. In the record presented, Claimant is not involved in substantial gainful activity and testified that she has not worked since 2001. 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 renal colic, hydronephrosis, vesicoureteral reflux, nephrolithiasis, thyroid issues, gastroesophageal reflux disease, depression, osteoarthritis, hepatitis C, and diabetes.

On March 6, 2012, Claimant followed up with her urologist. She was found to have a right vesicoureteral reflux. She underwent a right cross-trigonal ureteral reimplantation on December 22, 2011. She was recently seen because of urinary frequency. She also had some bilateral CVA tenderness for the past three weeks. On exam, her incision had healed nicely. She had some pain above the incision, but the urologist did not find any abnormalities. The urologist opined that it was a successful right ureteral reimplantation. She had no evidence of any residual reflux. She did have some nondescript pain that the urologist was unable to explain.

On March 17, 2012, Claimant had an internal medicine evaluation. Claimant's chief complaint was thyroid disease, diabetes, high cholesterol and depression. She had a history of a thyroid disorder and hyperlipidemia but was not taking medication for the problems. She was taking Metformin for her diabetes. She was on Tegretol and Klonopin for her depression. She had had stones in her kidney and a history of kidney infections. She has been admitted on multiple occasions for kidney problems. She had not had any treatment for hepatitis C except for interferon in the year 2000 for three months.

On April 28, 2012, Claimant underwent a psychiatric evaluation by the [REDACTED]. Claimant reported having multiple physical problems in the last few years. She stated she had surgery on her right side for some kidney problems and she was getting frequent kidney infections and kidney stones. She also has hepatitis C, diabetes, and arthritis with spurs on her feet limiting her functioning and disabling her from working. She reported having crying spells and trouble sleeping at night. She has feelings of hopelessness and helplessness with poor memory and poor concentration.

Claimant was in contact with reality. She had low self esteem and some psychomotor retardation present. She seemed motivated to get better. There also seemed a tendency to exaggerate symptoms. She had insight into her problems. She described her mood as depressed. Her affect was tearful. Diagnosis: Axis I: Mood disorder secondary to general medical condition; Axis V: GAF=55. Prognosis is fair. Based on the exam, the psychiatrist opined that Claimant seemed to be able to understand, retain, and follow simple instructions and was generally restricted to performing simple routine repetitive tasks. Due to her depression with psychomotor retardation and physical limitations, she is restricted to work that involves brief and superficial interactions with coworkers, supervisors and the public.

On June 21, 2012, Claimant was admitted to the hospital with a history of acute right renal colic. She underwent a workup in the emergency room, which revealed a right renal stone, but no signs of obstruction. Her pain was brought under control with pain medications and she was discharged on June 22, 2012 and instructed to follow-up with her urologist concerning her right renal colic and possible right renal stone.

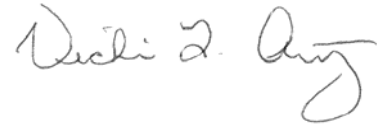
As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). In the present case, Claimant testified that she had osteoarthritis, hepatitis C, kidney infections and diabetes. According to her urologist, her right ureteral reimplantation was a success. The physician conducting the internal medicine examination noted that Claimant was not being actively treated for the hepatitis C, and was on Metformin for diabetes. Likewise, the psychiatrist that completed the psychiatric evaluation opined Claimant was capable of simple routine repetitive tasks, restricted to brief and superficial interactions with coworkers, supervisors and the public. The psychiatrist also indicated that Claimant had a tendency to exaggerate. As an aside, Claimant's medical records do not mention osteoarthritis, nor did she mention osteoarthritis as a complaint to either the psychiatrist or internal medicine physician. Therefore, based on the lack of objective medical evidence that the alleged impairment(s) are severe enough to reach the criteria and definition of disability, Claimant is denied at Step 2 for lack of a severe impairment and no further analysis is required.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant not disabled for purposes of the MA-P and Retro-MA benefit programs.

Accordingly, it is ORDERED:

The Department's determination is **AFFIRMED**.



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

Date Signed: April 24, 2013

Date Mailed: April 25, 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

2012-71459/VLA

VLA/las

cc:

