

[REDACTED]

**IN THE MATTER OF:**

[REDACTED]

Reg No.: 2012-78658  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: January 22, 2013  
Macomb County DHS (12)

**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 hearing was held in Warren, Tuesday, January 22, 2013. The Claimant appeared and testified. Participating on behalf of the Department of Human Services ("Department") was [REDACTED]

**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, retroactive to April 2012, on July 12, 2012.
2. On September 11, 2012, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 61, 62)
3. On September 13, 2012, the Department notified the Claimant of the MRT determination.
4. On September 19, 2012, the Department received the Claimant's written request for hearing. (Exhibit 2)

5. On November 14, 2012, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 3)
6. The Claimant alleged physical disabling impairments due to shoulder pain, arthritis, cataracts, shortness of breath, cardiomegaly, high blood pressure, abdominal pain, and diabetes mellitus with neuropathy.
7. The Claimant did not allege any mental disabling impairment(s).
8. At the time of hearing, the Claimant was 47 years old with a [REDACTED] birth date; was 5’5½” in height; and weighed 223 pounds.
9. The Claimant has a limited education with no employment over the last 15 years.

### **CONCLUSIONS OF LAW**

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-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 is not involved in substantial gainful activity 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 shoulder pain, arthritis, cataracts, shortness of breath, cardiomegaly, high blood pressure, abdominal pain, diabetes mellitus with neuropathy, and a history of cancer.

On February 16, 2011, the Claimant attended a follow-up appointment where she was diagnosed with insulin dependence diabetes mellitus (poorly controlled), hypertension, abdominal pain, obesity, gastric lymphoma, active tobacco abuse, and dyslipidemia.

On March 10, 2011, a pap smear was performed which was negative for intraepithelial lesion or malignancy.

In March 16, 2011, the Claimant sought treatment for abdominal pain.

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On April 12, 2011, the Claimant was diagnosed with urinary tract infection, allergic rhinitis, diabetes mellitus, hyperlipidemia, active tobacco abuse, obesity, and gastric lymphoma.

On May 17, 2011, the Claimant was diagnosed with uncontrolled diabetes mellitus, allergic rhinitis, hyperlipidemia, and obesity.

On June 28, 2011, the Claimant attended a follow-up appointment for her breast cancer status post lumpectomy with axillary dissection (2004), cervical high grade dysplasia (1997), and large B-cell lymphoma of the stomach (2008). In February 2011, the Claimant sought treatment for abdominal pain; however, PET/CT scan and laboratories were unremarkable. The physical examination confirmed mild diffuse tenderness on palpitation of the abdomen. The Claimant was referred to a GI due to her continued abdominal pain.

On July 11, 2011, a gastric-body biopsy found mild chronic gastritis with no evidence of lymphoma.

On September 20, 2011, the Claimant sought treatment for diabetes mellitus and left shoulder weakness with pain.

On October 11, 2011, the Claimant sought treatment for shoulder pain.

On November 17, 2011, sought treatment for continuing weakening of the left upper extremity with associated muscle aching.

On December 1, 2011, the Claimant sought treatment for her diabetes mellitus and left shoulder pain.

On June 26, 2012, a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were diabetes mellitus, hypertension, high cholesterol, and osteoarthritis. The Claimant's history of cervical and breast cancer was noted as well as gastric lymphoma. The physical examination confirmed chronic left shoulder pain due to osteoarthritis with reduced range of motion. The Claimant was in stable condition, and able to meet her needs in the home.

On December 20, 2012, a letter was written by the Claimant's treating physician confirming treatment of type II diabetes mellitus complicated by peripheral neuropathy, hypertension, dyslipidemia, and obesity. The peripheral neuropathy is severe resulting in mobility difficulty despite maximal medical control and multiple medications.

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 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. The evidence confirms treatment/diagnoses of diabetes mellitus with peripheral neuropathy, hypertension, abdominal pain, obesity, gastric lymphoma, tobacco abuse, dyslipidemia, allergic rhinitis, and left shoulder pain due to osteoarthritis. In July 2011, a biopsy found no evidence of lymphoma noting mild chronic gastritis. A history of cervical and breast cancer was also confirmed.

Listing 1.00 (musculoskeletal system), Listing 4.00 (cardiovascular system), Listing 5.00 (digestive system), Listing 9.00 (endocrine system), Listing 13.00 (malignant neoplastic disease), and Listing 14.00 (immune system disorders) were considered in light of the objective medical evidence. There were no objective findings of major joint dysfunction in both upper extremities, nerve root impingement, or fracture; persistent, recurrent, and/or uncontrolled (while on prescribed treatment) cardiovascular impairment; or end organ damage resulting from the Claimant's high blood pressure. The evidence confirms a history of breast and cervical cancer without recurrence and the July 2011 biopsy showed no evidence of gastric lymphoma. There was no evidence to meet the intent and severity requirement necessary to meet a digestive system impairment or immune system disorder. Although the objective medical records establish physical impairments, these records do not meet the intent and severity requirements of a listing, or its equivalent. Accordingly, the Claimant can not be found disabled, or not disabled at Step 3; therefore, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

Before considering the fourth step in the sequential analysis, a determination of the individual's residual functional capacity ("RFC") is made. 20 CFR 416.945. An individual's RFC is the most he/she can still do on a sustained basis despite the limitations from the impairment(s). *Id.* The total limiting effects of all the impairments, to include those that are not severe, are considered. 20 CFR 416.945(e).

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 additionally 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, i.e. 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 with the demands of past relevant work. *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 to 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 (i.e. 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.*

In this case, the evidence confirms treatment/diagnoses of diabetes mellitus with peripheral neuropathy, hypertension, abdominal pain, obesity, gastric lymphoma, tobacco abuse, dyslipidemia, allergic rhinitis, and left shoulder pain due to osteoarthritis. In July 2011, a biopsy found no evidence of lymphoma noting mild chronic gastritis. A history of cervical and breast cancer was also confirmed. The Claimant testified that she is able to walk less than ½ block; drops things with her right hand; sit for less than 2 hours; lift/carry approximately 5 pounds; stand for less than 2 hours; and has difficulties bending and/or squatting. The objective medical evidence confirms difficulty with mobility due to the severe neuropathy. After review of the entire record and considering the Claimant's testimony, it is found, at this point, that the Claimant maintains the residual functional capacity to perform at least unskilled, limited, sedentary work as defined by 20 CFR 416.967(a). Limitations being the alternation between sitting and standing at will.

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 is not considered. 20 CFR 416.960(b)(3).

The Claimant has not been employed over the last 15 years. As such, a determination of whether the Claimant is cable of past relevant work cannot be made. Accordingly, the Claimant cannot be found disabled, or not disabled, at Step 4.

In Step 5, an assessment of the Claimant'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, the Claimant was 47 years old and, thus, considered to be a younger individual for MA-P purposes. The Claimant has a limited 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 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). The age for younger individuals (under

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50) generally will not seriously affect the ability to adjust to other work. 20 CFR 416.963(c).

In this case, the evidence confirms treatment/diagnoses of diabetes mellitus with peripheral neuropathy, hypertension, abdominal pain, obesity, gastric lymphoma, tobacco abuse, dyslipidemia, allergic rhinitis, and left shoulder pain due to osteoarthritis. In July 2011, a biopsy found no evidence of lymphoma noting mild chronic gastritis. A history of cervical and breast cancer was also confirmed. The Claimant testified that she was unable to perform physical activity comparable to even sedentary. The objective findings limit the Claimant's mobility, however; she was found to be in stable condition and able to meet her needs in the home. There was no evidence that would restrict the Claimant from performing unskilled, sedentary work. In light of the foregoing, it is found that the Claimant maintains the residual functional capacity for work activities on a regular and continuing basis to meet the physical and mental demands required to perform sedentary work as defined in 20 CFR 416.967(a). After review of the entire record, finding no contradiction with the Claimant's non-exertional limitations, and in consideration of the Claimant's age, education, and RFC, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.18, the Claimant is found not disabled at Step 5.

### **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.

*Colleen M. Mamelka*

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

Date Signed: April 29, 2013

Date Mailed: April 29, 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

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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

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cc:

