

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

IN THE MATTER OF:

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Reg. No.: 2012 57281
Issue Nos.: 2009
Case No.: ██████████
Hearing Date: January 16, 2013
DHS County: Oakland (04)

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 Pontiac, Michigan on January 16, 2013. The Claimant appeared and testified. ██████████ ██████████ ██████████ ██████████ ██████████ the Claimant's, Authorized Hearing Representative, also appeared. ██████████ ██████████ a witness for the Claimant, also appeared. ██████████ ██████████, ES, appeared on behalf of the Department of Human Services ("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. On October 12, 2010 the Claimant submitted an application for public assistance seeking MA-P and retro MA benefits (July 2010).
2. On March 1, 2012 the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1)
3. The Department notified the Claimant of the MRT determination on March 7, 2012.

4. On June 4, 2012 the Department received the Claimant's timely written request for hearing.
5. On July 13, 2012, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued January 17, 2013. The new evidence was submitted to the State Hearing Review Team on March 7, 2013.
7. May 17, 2013 the State Hearing Review Team found the Claimant not disabled before April 2012 finding that for the prior period of time the Claimant was capable of light work and thus prior to April 2012 Claimant was not disabled, applying vocation rule 202.13.
8. The Claimant alleges physical disabling impairments due to coronary artery disease, and hypertension, and degenerative disc disease.
9. The Claimant has not alleged any mental disabling impairments.
10. At the time of hearing, the Claimant was ■ years old with an ■ birth date, the Claimant is now ■ years of age. Claimant is 5'5" in height; and weighed 190 pounds.
11. The Claimant has a high school education and has a past employment history as a hi lo driver, and general labor building pallets and crates, and also ran drill presses.
12. The Claimant's impairments have lasted or are expected to last 12 months duration or more.

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, 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 Manual ("BRM").

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 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, the Claimant is not involved in substantial gainful activity and, therefore, is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 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 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).

The Claimant alleges physical disabling impairments due to coronary artery disease, and hypertension and degenerative disc disease.

A summary of the medical evidence presented at the hearing and additional evidence provided pursuant to the Interim Order follows.

A Medical Examination Report was completed Claimant's cardiologist. The diagnosis was chest pain with history of coronary artery disease and stent in LAD. The cardiologist rated the Claimant's cardiovascular exam as normal and noted the Claimant was improving. The examiner found that the Claimant had some limitations including frequently lifting up to 25 pounds, (2/3 of an 8 hour day), that the Claimant could stand and walk about 6 hours in an 8 hour work day and sit about six hours in an 8 hour day. The Claimant was found to be able to use both her hands and arms for simple grasping, reaching, pushing and pulling and fine manipulation and had no limitations on using her feet. The Claimant was evaluated as able to meet her needs in the home.

On [REDACTED] the Claimant was evaluated by her pain management doctor and was placed on the following limitations: she could stand or walk less than 2 hours in an 8 hour work day and sit less than 6 hours in an 8 hour work day. She could occasionally lift less than 10 pounds for 1/3 of an 8 hour work day and based the limitation on an MRI of cervical spine. The doctor did not test the Claimant for ability to use her hands and arms or feet. The evaluation referenced an MRI of the cervical spine. The Claimant was last seen by this doctor in January 2013. The diagnosis was cervical radiculitis. The Medical needs form completed by the Doctor also noted that Claimant needs a driver and noted neck pain radiating to the left shoulder and low back.

The Claimant was admitted to the hospital on [REDACTED] complaining of extreme chest pain. The Claimant was tested and did have a positive Persantine stress test and positive T wave inversions. A catheterization was performed. A left cardiac catheterization, left ventriculopathy and intravascular ultrasound study of the proximal LAD and placement of stent of the proximal LAD were performed on September 8, 2010. The LAD had significant disease with at least about 80%. At the conclusion of the procedure the following was noted, normal overall LV systolic function, widely patent left main and small non-dominant right coronary artery, and significant stenosis noted at the very proximal part of the LAD. After further exploration a stent was placed to open the artery.

A Medical Exam Report was prepared as part of a consultative examination on January 16, 2012 by a family practice physician. The diagnosis was coronary artery disease, hypertension. On examination neck pain was noted and pain in both upper extremities, but no chest pain. The exam noted lots of muscle spasm in the neck, back of the neck area, with full range of motion. The Claimant had full range of motion in the wrists and shoulders. Straight leg raising was positive about 30 to 40 degrees bilaterally. The Claimant has decreased strength in both upper extremities. The Assessment was as follows: coronary artery disease status post stent placement, high blood pressure, hyperlipidemia, Questionable CVA (stroke), cervical radiculopathy under workmen's comp.

The Claimant's cardiologist completed a Medical Exam Report on [REDACTED] At that time post-stent the doctor noted the Claimant was improving and imposed limitations. The Claimant could frequently lift up to 20 pounds, sit about 8 hours in an 8 hour work day, and had full use of her hands and feet. The Claimant was found to be able to meet her needs in the home.

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 objective medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. Accordingly, 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 Claimant asserts disabling impairments due to coronary artery disease, hypertension and neck and back pain.

Listing 4.02 Chronic Heart Failure and Listing 1.04 Disorders of the Spine were considered in light of the objective medical evidence. Ultimately, it is found that the Claimant suffers from some medical conditions; however, the Claimant's impairments do not meet the intent and severity requirement of a listing. The Claimant cannot be found disabled, or not disabled, at Step 3. Accordingly, the 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 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) 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 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 regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The Claimant's prior work history consists of employment as a hi lo driver and also work as a general laborer building pallets and crates. The Claimant also operated a drill press. When building crates and pallets the Claimant lifted wood weighing over 50 pounds and used a nail gun weighing 15 pounds. 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 medium work.

The Claimant credibly testified that she is able to walk about ½ block. The Claimant can squat and bend at the waist with pain, shower and dress herself but cannot wash her hair due to pain in her upper extremities, she cannot tie her shoes or touch her toes. The Claimant further testified that the heaviest weight she could carry was a quart of milk. The Claimant testified that she could stand for 15 minutes and sit for 15 minutes. The Claimant testified that she is able to go up and down stairs slowly and with pain and is out of breath and has to rest. The objective medical evidence places the Claimant at mild to sedentary activity.

If the impairment or combination of impairments does not limit 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. In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is not able to return to past relevant work due to limitations regarding her neck pain and radiculitis. Thus, the fifth step in the sequential analysis is required.

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 sedentary work.

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). The Claimant is ■ years old and, thus, is considered to be an individual of advanced age for MA purposes. The Claimant graduated from high school. 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).

In this case, the evidence reveals that the Claimant claims impairment due to coronary artery disease and cervical radiculopathy with weakness in both upper extremities. The medical objective findings based upon an MRI and an evaluation by Claimant's pain management doctor place the Claimant at less than sedentary activity. This finding coupled with pain as testified to by the Claimant and Claimant's credible testimony of her physical limitations provide evidence that these conditions cause Claimant to be unable to perform sedentary work. Additionally, the cardiologist's evaluation was considered but was construed as limited to the Claimant's heart condition and not the Claimant's neck pain and upper extremity weakness. Further the consultative examiner confirmed on examination that the Claimant had positive straight leg raising bilaterally, lots of muscle spasm in the neck back of the neck, and decreased strength in both upper extremities and notes cervical radiculopathy. Based upon the foregoing object medical evidence it is determined that the Claimant has the capacity to perform sedentary work.

In consideration of the foregoing and in light of the objective limitations, it is found that the Claimant retains the residual functional capacity for work activities on a regular and continuing basis to meet at the physical and mental demands required to perform sedentary work as defined in 20 CFR 416.967(a). After review of the entire record and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a

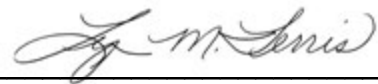
guide, specifically Rule 201.01 it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant disabled for purposes of the MA-P benefit program.

Accordingly, it is ORDERED:

1. The Department determination is REVERSED.
2. The Department shall initiate processing of the October 12, 2010 application and retro application (July 2010) to determine if all other non-medical criteria are met and inform the Claimant of the determination in accordance with Department policy.
3. The Department shall review the Claimant's continued eligibility in June 2014 in accordance with Department policy.



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

Date Signed: June 12, 2013

Date Mailed: June 12, 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)

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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

LMF/cl

cc:

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[REDACTED]
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