

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

IN THE MATTER OF:



Reg. No.: 2012-39041
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: May 23, 2012
Wayne County DHS (41)

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, a telephone hearing was held in Detroit, Michigan on May 23, 2012. The Claimant appeared and testified as did [REDACTED] a witness for the Claimant. Rita Edwards, Medical Contact Worker 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") and retro 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:

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 on November 23, 2011 for public assistance seeking MA-P benefits and retro MA-P benefits.
2. On February 8, 2012 Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1)
3. The Department notified the Claimant of the MRT determination on February 14, 2012.

4. On March 4, 2012 the Department received the Claimant's timely written request for hearing.
5. On April 26, 2012, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued on June 1, 2012 and additional evidence was ordered to be obtained by the Department at the hearing and submitted.
7. Most of the new evidence ordered to be obtained from the Claimant's physicians was not submitted.
8. The new evidence was submitted to the State Hearing Review Team for its review on August 24, 2012.
9. On October 11, 2012 the State Hearing Review Team found the Claimant not disabled.
10. The Claimant alleged mental disabling impairments due to including major depressive disorder, post traumatic stress disorder, personality disorder.
11. The Claimant alleged physical disabling impairments due to arthritis in both knees, Deep vein thrombosis of the legs and chronic leg swelling in her legs, lupus, fibromyalgia and edema in the lungs.
12. At the time of hearing, the Claimant was 46 years old with an [REDACTED] birth date. The Claimant was 5'6" in height; and Claimant weighed 400 pounds and had recently gained 40 pounds.
13. The Claimant has a high school education, a year of college and a culinary arts certificate. The Claimant's employment history included working as a day care teacher's assistant. The Claimant also worked as a cook for the day care facility preparing 2 meals and snack for 125 children. The Claimant also worked as an elementary school teacher's aid and lunch school aid for the Detroit Public Schools
14. The Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

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 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 (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 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) An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done (or intended) for pay or profit. 20 CFR 416.910(a)(b) Substantial gainful activity is work activity that is both substantial and gainful. 20 CFR 416.972 Work may be substantial even if it is done on a part-time basis or if an individual does less, with less responsibility, and gets paid less than prior employment. 20 CFR 416.972(a) Gainful work activity is work activity that is done for pay or profit. 20 CFR 416.972(b)

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a) First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1) When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2) Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2) Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1) In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3) The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4) A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d) If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR 416.920a(d)(2) If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

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 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)

The Claimant alleges physical disabling impairments which include arthritis in both knees, Deep vein thrombosis of the legs and chronic leg swelling in her legs, lupus, fibromyalgia and edema in the lungs.

The Claimant alleges mental disabling impairments including major depressive disorder, post traumatic stress disorder, personality disorder.

A synopsis and review of the medical evidence submitted at the hearing follows.

On June 18, 2012 the Claimant was seen and admitted to the hospital with complaints of chest pain associated with breathing and tingling. Pain severity reported as 10/10. The Claimant also complained of back pain. the physical examination of chest indicates effort normal and breath sounds normal, not tachypnic, no respiratory distress and decreased breath sounds. No wheezes no rhonchi and no rales. X ray and ECG were normal. The Echo transthoracic exam notes There is normal left ventricular ejection fraction visually estimated ejection fraction is 60%. Normal left ventricular diastolic filling is observed. The right ventricular systolic pressure is calculated at 34 mmHg. A lung scan ventilation perfusion test was also preformed with the impression findings consistent with pulmonary embolism. A cardiology consult noted fatigue probable due to underlying sleep apnea. The impression was lower extremity edema, right sided chest pain with neck pain and back pain. Morbid obesity, asthma and probable obstructive sleep apnea. There is no evidence of acute coronary syndrome or congestive heart failure. A lower extremity venous duplex bilateral was conducted with the impression that DVT evidence not seen. The final disposition chest wall pain and atypical chest pain and swelling. An echocardiogram was also performed with the following impression: normal left ventricular disastoci fill is observed, right ventricular systolic pressure is 34 mmhg. A lung scan was also conducted and noted findings consistent with high probability for acute pulmonary embolism.

A Medical Examination report was completed on June 7, 2012 by Claimant's treating physician. The Claimant's treating physician has seen the Claimant since January 2010. The exam current diagnoses were history of deep vein thrombosis of lower extremities, pulmonary embolism grade II systolic murmur, arthritis, and lupus. The Claimant's weight was 386 pounds and the Claimant's height was 5'6". The examination noted pain level 10 out of 10 joint swelling from feet and knees, mental status noted depression. Several areas of the examination report were not readable due to the doctor's hand written notes. The examination resulted in limitations being imposed including occasionally lifting less than ten pounds and never more than 10 pounds, that the Claimant was able to stand and or walk less than 2 hours in an 8 hour work day. The Claimant was restricted from reaching pushing and pulling with either hand. The Claimant's condition was noted as deteriorating. The exam concluded that the Claimant needs assistance with housework, cooking, cleaning and shopping.

A consultative examination was conducted at the request of the Department on January 20, 2012 and noted that Claimant was markedly obese. Lungs were clear. Handgrip was weak bilaterally. Difficulty getting up from a seated position and getting on the examination table. Gait was very slow. Difficulty with tandem and tip toe and heel walking. Difficulty bending stooping and squatting. Range of motion of the cervical and lumbar spine is slightly decreased. Hip joint range of motion is decreased on the left. Knee joint movement is decreased bilaterally with crepitus noted. Ankle joint movement is decreased on the left. Straight leg raising is 20 degrees on right and 10 degrees on the left with complaint of back and hip pain. The impression was as follows, chronic bronchial asthma, on in halers, extreme obesity BMI 54, DVT of the left leg with pulmonary embolism – status post ivc filter placement and long term Coumadin therapy. Chronic back pain with paresthesia and numbness in the left leg and left foot. Lumbar range of motion is decreased. Arthritis in the left hip range of motion of left hip is decreased. Osteoarthritis of the knees – range of motion of knees is decreased, overactive bladder with stress incontinence. The examination as regards the neurologic and current abilities places comments regarding bending which are not readable.

A consultative mental status examination was conducted on February 22, 2012. Some prior medical records were available for review by the consultative doctor. The Claimant's affect of expression was blunted and mood was mildly depressed. The history taken notes Claimant was depressed since age of 9 and was institutionalized at that time. The examiner noted that the Claimant did have sleep disturbances due to her mental condition and nightmares. The diagnoses were adjustment disorder with depressed mood and the GAF score was 60. A mental residual functional capacity evaluation was submitted and was dated June 8, 2012 and was completed well after the examination and was found to be of little weight as it noted see mental records for any inconsistency.

The Claimant was admitted to the hospital in October 2011 due to leg swelling with a 4+ edema and the left leg was very tender to palpation from calf to mid thigh. Impression bilateral edema, likely secondary to lymph edema. The impression was dispend, history of pulmonary embolus, probable copd, morbid obesity and acute bronchitis. The comprehensive metabolic panel was abnormal. No segmental pulmonary embolism was noted. A lower extremity venous duplex was conducted and found the left popliteal vein is not well viewed evaluation DVT in this vein cannot be excluded.

The claimant was admitted to the hospital in November 7, 2011 due to vaginal bleeding and fatigue with a stay of 4 days. The assessment and plan noted near syncope and anemia. The patient was treated with IV fluids until orthostatic blood pressure and heart rate were corrected. A complete blood count test was abnormal. A cat scan of the chest found positive for large bilateral pulmonary emboli. On 11/9/11 an IVC filter was

placed due to pulmonary embolism major with placement of inferior vena cava filter. A venous duplex bilateral test of the lower extremities was also conducted and noted acute left popliteal and posterior tibial deep vein thrombosis.

The Claimant has received treatment for her depression since October 2011 and currently is in treatment for her depression. A psychiatric evaluation was conducted on 12/13/11. The examination noted insight and judgment was fair. The diagnosis was major depressive disorder recurrent, severe without psychotic. A secondary diagnosis was post traumatic stress disorder. The GAF score was 55. Outpatient services and psychotropic drugs were recommended. A medical activity ticket noted that the medications were continued and that no changes in mood, sleep or appetite were reported.

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 some objective medical evidence establishing that she does have some physical and mental limitations on her 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 mental disabling impairments due to Depression and physical disabling impairments including arthritis in both knees, Deep vein thrombosis of the legs and chronic leg swelling in her legs, lupus, fibromyalgia and edema in the lungs.

Listing 12.04 Major Depressive disorder was considered and it was determined based upon the objective medical evidence that the Claimant did not meet the listing. Likewise Listing 1.04 Musculoskeletal System, Disorders of the Spine and Listing 4.11 chronic venous insufficiency were considered and based upon the objective medical evidence the Claimant's conditions did not meet the listings.

The fourth step in analyzing a disability claim requires an assessment of the claimant's residual functional capacity (RFC) and past relevant employment. 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 working as a day care teacher's assistant. The Claimant also worked as a cook for the day care facility preparing 2 meals daily and snacks for 125 children. The Claimant also worked as an elementary school teacher's aid and lunch school aid for the Detroit Public Schools

In light of the Claimant's testimony and records, and in consideration of the Occupational Code, the Claimant's prior work is classified as semi skilled, light to medium work.

The Claimant credibly testified that she is not able to walk any significant distance (one half block), she can stand 15 to 20 minutes and sit 30 to 45 minutes and that these abilities are limited due to back pain and leg pain. Due in part to obesity and the conditions of her knees the Claimant cannot squat cannot tie her shoes and cannot touch her toes. The Claimant also credibly testified that her pain in her knees, legs back and shoulders is consistently 8 out of 10. the Claimant indicated that she can carry no more than five pounds and has some weakness in her hands which was confirmed in noted in the consultative physical exam referenced earlier. Climbing stairs leaves her out of breath. The claimant testified that she cannot move around a lot due to pain. The Claimant also has sleep difficulties. A witness for the Claimant who has known her for many years noted that she has observed that the Claimant has difficulty walking and walks bent over. She has also observed that Claimant's leg swell 3 to 4 time weekly.

The objective medical evidence consisting of evaluations by Claimant's treating primary care physician has determined on examination that the Claimant's physical restrictions and limitations do significantly limit the Claimant. Further Claimant's treating physician's

most recent evaluation on June 29, 2012, after numerous visits and at least 2 years of treatment concluded that the clinical impression was that the Claimant was deteriorating and has significant limitations. The examiner/treating physician imposed the following restrictions: That Claimant could lift less than 10 pounds occasionally and 10 pounds occasionally. The Claimant could stand and or walk less than 2 hours in an 8 hour work day, and had limitations with reaching and pushing and pulling.

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 as she would not be able to perform her position as a cook or child care assistant; thus, the fifth step in the sequential analysis is required.

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 46 years old and, thus, is considered to be younger individual for MA purposes. The Claimant is a high school graduate with some college courses and a culinary certificate. 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 medical evidence reveals that the Claimant's medical conditions include physical disabling impairments including deep vein thrombosis, with swelling of the legs and knees, pulmonary embolism, arthritis in both knees, back, neck and leg pain and is morbidly obese. The evaluations and medical opinions of a "treating "physician is "controlling" if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record. 20 CFR§ 404.1527(d)(2), Deference was given by the undersigned to objective medical testing, and the hospitalization for her pulmonary embolism and deep vein thrombosis and observations and opinions of the Claimant's treating physician.

The objective medical evidence provided by the Claimant's treating primary care physician and in consideration of several hospital admissions and testing data which

medically support Claimant's conditions and the limitations placed upon the Claimant by her treating physician, place the Claimant at the less than sedentary activity level. The total impact caused by the physical impairment suffered by the Claimant must be considered. In doing so, it is found that the combination of the Claimant's physical impairments have a major impact on her ability to perform basic work activities. Accordingly, it is found that the Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a). After review of the entire record, and in consideration of the Claimant's age, education, work experience and residual functional capacity it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

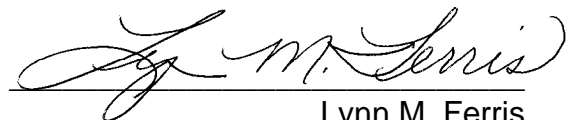
It is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

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.

Accordingly, It is ORDERED:

1. The decision of the Department is **REVERSED**.
2. The Department is ordered to initiate processing of the Claimant's Ma-P application dated November 23, 2011, and Retro MA-P application and award required benefits, provided Claimant meets all non medical eligibility requirements.
3. The Department shall initiate review of the Claimant's disability case in November 2013, in accordance with Department policy.



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

Date Signed: November 21, 2012

Date Mailed: November 21, 2012

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

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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 to:

Michigan Administrative hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

LMF/tm

cc:

Wayne County (41) DHS/1843

EQAD

SHRT

L. Ferris