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

IN THE MATTER OF:

[redacted]

Reg. No.: 2012-64392
Issue No.: 2009; 4031
Case No.: [redacted]
Hearing Date: October 10, 2012
County: Ionia

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Admini strative Law Judge upon the Claimant's request for a hearing made pursuant to Mi chigan Compiled Laws 400.9 and 400.37, which gov ern the administrative hearing a nd appeal process. After due notice, a telephone hearing was commenced on October 10, 2012, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [redacted] [redacted]

During the hearing, Claimant wa ived the time period for the issuance of this decision in order to allow for the submission of addi tional medic al evidenc e. The new evidenc e was forwarded to the State Hearing Review Team (SHRT) for consideration. On December 4, 2012, the SHRT found Claim ant was not disabled. This ma tter is now before the undersigned for a final decision.

ISSUE

Whether the Department of Human Se rvices (the department) properly denied Claimant's application for Medical Ass istance (MA-P), Retro-MA and State Dis ability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the com petent, material and substantial evidence on the whole record, finds as material fact:

(1) On June 6, 2012, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.

(2) On June 27, 2012, the Medical Re view Team (MRT) denied Claimant's application for MA-P, indic ating that Claimant is capable of p erforming other work, pursuant to 20 CF R 416.920(f). SDA was denied due to lack of duration. (Department Exhibit A, pp 7-8).

(3) On July 10, 2012, the department sent out notice to Claimant that her application for Medicaid had been denied.

(4) On July 16, 2012, Claimant filed a request for a hearing to contest the department's negative action.

(5) On August 29, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA-P benefits indicating Claimant retains the capacity to perform basic work activities. SDA was denied due to lack of severity. (Department Exhibit B).

(6) Claimant has a history of severe anemia and uterine fibroids.

(7) Claimant is a 50 year old woman whose birthday is [redacted]. Claimant is 5'5" tall and weighs 205 lbs. Claimant has a high school education and has not worked since May 14, 2012.

(8) Claimant had applied for 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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

> Sec. 604 (1). The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

> (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

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 CRF 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 May 14, 2012. 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 severe anemia and uterine fibroids.

On May 23, 2012, Claimant underwent a medical examination where she was diagnosed with severe anemia and needing a transfusion. The examining physician found Claimant's condition was stable, but took Claimant off work until she was evaluated by a gynecologist due to her severe anemia.

On May 25, 2012, Claimant was evaluated by a gynecologist. Claimant stated that she had been bleeding since she started her period on 5/6/12 and was passing a lot of blood clots. She had edema and dizziness. Claimant had been hospitalized at [redacted] Hospital on 5/1/12 for severe anemia and was in heart failure which was attributed to the severe anemia. She was very bloated and stated she had a blood transfusion and was told that she had a uterine fibroid. She stated she had 4 units of blood at [redacted] Hospital, then 2 more units of blood in [redacted] but they did not take, was 6.5 but only went to 6.9. She went to [redacted] Hospital at the beginning of the month due to breathing issues. Then went to the [redacted] emergency room last week and received blood both times. She went back to work one day, and had to get blood drawn after work. She was given a water pill because she had gained 30 pounds. She lost 40 pounds since 5/3/12, due to all the water weight. She had an ultrasound revealing a 9 cm fibroid that had to be shrunk before she could have surgery. The pain has gone away. The gynecologist noted that it was amazing she was alive, and Claimant stated the ER doctor said she should have been in a coma. The gynecologist was able to remove the 11 cm vaginal mass and Claimant was admitted to [redacted] where she underwent blood transfusions for her anemia. She was also started on ferrous sulfate and discharged in stable condition on 5/26/12.

On May 30, 2012, the MRI of Claimant's pelvis showed a 15.7 x 9.2 x 9.3 cm mass that appeared to be subcapsular involving the posterior myometrium of the uterus, representing a large hematoma. The endometrium was thickened, measuring approximately 1.2 cm. There were also several cysts that were noted within the cervix that represented nabothian cysts. They measured 2. 4, 1.1 and 1.5 cm respectively. The abdominal MRI revealed the gallbladder to be mildly dilated with 1 large density noted that represented a large gallstone measuring almost 2 cm with several smaller ones present. No other abnormalities were present.

On June 5, 2012, Claimant followed up with her gynecologist. Claimant stated she had received 10 units of blood and had an MRI done. The MRI showed galls stones and a large gall bladder. The need for surgery was discusse d while she still had insurance. The gynecologist explained that while the mass was benign, due to some atypical cells, it was possible it could progress into cancer, and a hysterectomy was needed.

On June 29, 2012, Claimant saw her gynecologist for her annual examination. Claimant's uterus was on the larger side and a plan to place lighted stents in her ureters for surgery as her uterus takes up the whole pelvic cavity was discussed. Claimant was informed that the surgery would be inpatient and she would be spending the night.

On July 27, 2012, Claimant followed up with her gynecologist and surgery options were discussed. Claimant stated the bleeding had been pretty bad, clotty and painful. She complained of pain with palpation of abdomen. Her gynecologist discussed doing the hysterectomy and also removing the ovaries. Claimant signed the consent form. She was instructed to call the hospital to schedule the time for surgery.

On August 2, 2012, Claimant was taken off work for six weeks due to her surgery which included a davinci hysterectomy, cystoscopy, uterosacral colpopexy and lighted stents.

On August 14, 2012, Claimant followed up with her gynecologist postop the davinci hysterectomy. Claimant was 12 days postop her hysterectomy with no post op complications. Her symptoms had improved compared to preoperative. Her postop symptoms had been mild. Half of her sutures were removed and steri strips were applied.

On August 21, 2012, Claimant was 3 weeks postop and saw her gynecologist for follow-up. Claimant's symptoms have improved post op, compared to preop. Her postop pain was mild.

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 severe anemia and a uterine fibroid. 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.

The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p 1. Because Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that Claimant is unable to work for a period exceeding 90 days, Claimant does not meet the disability criteria for State Disability Assistance benefits either.

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, Retro-MA and SDA benefit programs.

Accordingly, it is ORDERED:

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

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

Date Signed: January 2, 2013

Date Mailed: January 2, 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 mailing 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

VLA/las

cc: [redacted]