

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-264
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 8, 2013
County: Ingham

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon Claimant's request for a hearing made pursuant to Michigan Compiled Laws 400.9 and 400.37, which govern the administrative hearing and appeal process. After due notice, an in-person hearing was commenced on January 8, 2013, at the Ingham County DHS office. Claimant, represented by [REDACTED] of [REDACTED] personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Lead Worker [REDACTED] [REDACTED]

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On April 29, 2013, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P) and Retro-MA?

FINDINGS OF FACT

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

- (1) On June 28, 2012, Claimant filed an application for MA-P and Retro-MA benefits alleging disability.
- (2) On April 12, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that her impairment(s) lacked duration and/or Claimant was capable of performing other work. (Depart Ex. A, pp 1-2).

- (3) On June 28, 2012, the department case worker sent Claimant notice that her application was denied.
- (4) On September 21, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On October 31, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform a wide range of light, unskilled work. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of deep vein thrombosis (DVT), gastroesophageal reflux disease (GERD), open reduction on right ankle, hyperlipidemia, hypothyroidism, obesity, depression, and obstructive sleep apnea, shortness of breath, anxiety and edema.
- (7) Claimant is a 41 year old woman whose birthday is [REDACTED]. Claimant is 5'4" tall and weighs 280 lbs. Claimant completed high school.
- (8) Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

CONCLUSIONS OF LAW

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

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

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has

received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

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

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

As outlined above, the first step looks at the individual's current work activity. In the record presented, Claimant is not involved in substantial gainful activity and testified that she has not worked since January, 2011. 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 deep venous thrombosis (DVT), gastroesophageal reflux disease (GERD), open reduction right ankle, hyperlipidemia, hypothyroidism, obesity, depression, obstructive sleep apnea, shortness of breath, anxiety and edema.

On February 4, 2012, at the emergency department after tripping off a curb, x-rays of Claimant's ankle showed a fracture of the lower fibular about 6 cm above the ankle mortise with mild angulation and displacement. There was a fracture of the medial malleolus which was transverse and located at the level of the ankle mortise. There was some disruption of the ankle mortise with the lateral subluxation of the talus relative to the distal tibia. Some irregularity of the posterior tibia was also present, most likely a posterior malleolar fracture. A closed reduction and a splint were applied.

On February 15, 2012, Claimant underwent an open reduction internal fixation of the bimalleolar ankle fracture and open reduction internal fixation syndesmotic disruption.

On February 21, 2012, after experiencing increased pain, in addition to swelling, tenderness and cramping in the calf. A Doppler was performed showing a right lower extremity DVT. A heparin drip was started.

On February 24, 2012, Claimant was discharged from the hospital with a diagnosis of deep vein thrombosis, right leg; status post open reduction and internal fixation of right ankle; gastroesophageal reflux disease; hypothyroidism; depression; restless legs;

obesity, and sleep apnea. She was instructed to maintain the fracture boot at all times and a rollabout with nonweightbearing for 2 weeks and to quit smoking.

On March 2, 2012, Claimant's social worker completed a medical examination report. Claimant reported depressive symptoms, poor personal grooming, apathy, anger, fatigue, low energy, and loss of job due to inability to be on time at work. Claimant was seen with her parent. Claimant had no regular ongoing treatment intervention. The social worker indicated Claimant was depressed and there was no change in her condition.

On May 24, 2012, Claimant followed up with her orthopedist. Claimant was out of her boot and had stiffness and incomplete mobility of her ankle. The x-rays showed a satisfactory appearance of the trimalleolar ankle fracture with syndesmotic disruption. The syndesmotic screws remained intact without evidence of fracture. The orthopedist opined she was doing great and encouraged her in a home exercise program.

On June 12, 2012, Claimant went to the emergency department for sciatica and pain down her left leg. A Doppler of her left leg was negative for deep venous thrombosis. She was prescribed Vicodin and Coumadin and discharged.

On June 16, 2012, Claimant saw her treating physician for sciatica. The sciatica was improving. The pain had been in her legs, radiating down the left calf. She described the pain as an ache. Her symptoms were aggravated by bending. She had gained 17 pounds over a 4 month period and was still gaining weight due to decreased mobility. A musculoskeletal exam revealed she had normal range of motion, muscle strength and stability in all extremities with no pain on inspection. She was oriented to time, place and person and had normal insight and judgment. She demonstrated an appropriate mood and affect. She was referred to psychology and instructed to stop smoking.

On July 26, 2012, Claimant followed up with her treating physician regarding her hyperlipidemia. Her physician noted Claimant had not been compliant with her diet and wanted an increase in her Cymbalta. Claimant has gained weight. She was depressed. She exhibited normal judgment as well as the appropriate mood and affect. Coumadin was decreased. She was instructed to quit smoking and was referred to nutrition and psychology for counseling.

On August 16, 2012, Claimant met with her therapist. Claimant talked about her lack of energy and hygiene. She talked about needing to continue to clean her grandparent's house. She talked about pursuing disability benefits. Discussed Claimant not completing her homework and how dedicated she was to helping herself. Her appearance was appropriate. Her behavior and psychomotor behaviors were unremarkable. Her speech was clear. Her affect was appropriate and her mood euthymic. Her memory was intact. Her reasoning, impulse control, judgment and insight were fair. Her self-perception was realistic. Her thought processes were logical and thought content unremarkable. She did not express suicidal ideation. Clinical Assessment: Axis I: Dysthymic disorder; Tobacco Use Disorder; Axis III: Sleep Apnea; Axis IV: Severe. Problems related to finances, housing, occupation and social environment; Axis V: Current GAF: 45.

On August 22, 2012, Claimant underwent a one-time psychological evaluation by a social worker. Claimant was transported by her mother. Claimant was neat, clean and polite. She stated her usual occupation was as a secretary. Her intake history showed a diagnosis of mood disorder. She lacks motivation and has a fear of failure. She was in behavioral/cognitive treatment concerning her lost motivation. She was oriented in all three spheres. She had good judgment but was not motivated. She was able to recall complex information. Her daily functioning appeared appropriate. Diagnoses: Axis I: Depressive Disorder; Axis III: GERD, overweight; Axis IV; psychosocial stressors, motivation, family desires, self-reliance; Axis V: 51-60.

On September 17, 2012, Claimant attended individual therapy. She talked about her reason for missing the last appointment. She talked about her stress about money. She talked about attending water aerobics and how the exercise classes were helping to improve her leg issues. She talked about her struggle to find herself and how her anxiety of failure is preventing her from looking for a new job. GAF=52.

On October 4, 2012, Claimant talked about exercising at the pool, telling her therapist that it was the best thing for her. She reported that her leg was healing well. They discussed her depression and Claimant stated she had actually caught her self smiling. She talked about goals she had set for herself. GAF=53.

On November 1, 2012, Claimant saw her therapist and reported she was not doing well. She talked about wanting to get her medication increased. She reported that her depression has increased and she is not getting out of bed. She talked about her mother pushing her. GAF=55.

On November 15, 2012, Claimant talked about swimming once a week and not wanting to get out of bed yesterday. She talked about babysitting her nieces and her friend. Claimant's Mom attended the session. Claimant talked about filing an appeal for disability. GAF=56.

On January 10, 2013, during Claimant's individual therapy, Claimant talked about court and continuing services. She talked about her options for services and about the letter written by her therapist. She talked about her frustration and fears and about being angry and spiteful. GAF=55.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Claimant has presented some limited medical evidence establishing that she does have some physical and mental limitations on her ability to perform basic work activities. The medical evidence has established that Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, 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 individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Claimant has alleged physical and

mental disabling impairments due to deep vein thrombosis (DVT), gastroesophageal reflux disease (GERD), open reduction right ankle, hyperlipidemia, hypothyroidism, obesity, depression, obstructive sleep apnea, shortness of breath, anxiety and edema.

Listing 1.00 (musculoskeletal system), Listing 7.00 (hematologic disorders), Listing 12.00 (mental disorders) and Listing 14.00 (immune system disorders), were considered in light of the objective evidence. Based on the foregoing, it is found that Claimant's impairment(s) does not meet the intent and severity requirement of a listed impairment; therefore, Claimant cannot be found disabled at Step 3. Accordingly, 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 individual'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 functioning 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.*

Claimant's prior work history consists of work as a secretary and receptionist. In light of Claimant's testimony, and in consideration of the Occupational Code, Claimant's prior work is classified as unskilled, light work.

Claimant testified that she is able to walk short distances and can lift/carry approximately 10 pounds. The objective medical evidence notes no limitations. If the impairment or combination of impairments does not limit an individual's 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 Claimant's testimony, and medical records, Claimant cannot be found able to return to past relevant work. Accordingly, Step 5 of 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). At the time of hearing, Claimant was 41 years old and was, thus, considered to be a younger individual for MA-P purposes. Claimant has a high school education and some college. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from Claimant to the Department to present proof that 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

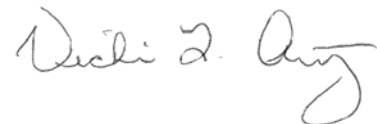
economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). The age for younger individuals (under 50) generally will not seriously affect the ability to adjust to other work. 20 CFR 416.963(c).

In this case, the evidence reveals that Claimant suffers from deep vein thrombosis (DVT), gastroesophageal reflux disease (GERD), open reduction right ankle, hyperlipidemia, hypothyroidism, obesity, depression, obstructive sleep apnea, shortness of breath, anxiety and edema. The objective medical evidence notes no physical or mental limitations. In light of the foregoing, it is found that Claimant maintains the residual functional capacity for work activities on a regular and continuing basis which includes the ability to meet the physical and mental demands required to perform at least sedentary work as defined in 20 CFR 416.967(a). After review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.28, it is found that Claimant is not 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 Claimant not disabled for purposes of the MA-P benefit programs.

Accordingly, it is ORDERED the Department's determination is **AFFIRMED**.



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

Date Signed: June 3, 2013

Date Mailed: June 4, 2013

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

VLA/las

cc:

