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

IN THE MATTER OF:

[redacted]

Reg. No: 2012-77997
Issue No: 2009
Case No: [redacted]
Hearing Date: December 4, 2012
Bay County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on December 4, 2012. The claimant was represented by Advomas. The claimant personally appeared and provided testimony. The department witness was [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 25, 2013, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA) application?

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 April 12, 2012, claimant applied for MA with the Michigan Department of Human Services (DHS).

2. Claimant applied for retro MA for the month of March, 2012.

3. On June 18, 2012, the MRT denied.

4. On June 22, 2012, the DHS issued notice to the claimant and on June 25, 2012, the DHS issued notice to the claimant's representative.

5. On September 20, 2012, claimant filed a hearing request.

6. Claimant has an SSI appeal pending with the Social Security Administration (SSA).

7. On October 30, 2012, the State Hearing Review Team (SHRT) denied claimant. Pursuant to the claimant's request to hold the record open for the submission of new and additional medical documentation, on April 25, 2013 SHRT once again denied claimant.

8. As of the date of hearing, claimant was a 50-year-old female standing 5'4" tall and weighing 150 pounds. Claimant has a high school education and some college classes with a CNA certification.

9. Claimant testified that she smokes about ½ package of cigarettes per day, does not drink alcohol and uses marijuana occasionally.

10. Claimant has a driver's license and can drive an automobile.

11. Claimant is not currently working. Claimant last worked in 2002 as a home health care worker, which she did for the prior 15 years.

12. Claimant alleges disability on the basis of high blood pressure, a blood infection, heart problems, back problems and high cholesterol.

13. Claimant has a history of cardiac catheterization and angioplasty and stenting of the right coronary artery (2004).

14. Claimant presented to the hospital on March 26, 2012 with nausea, vomiting and fever. An xray of the chest found the heart was not enlarged, the lungs were clear and there was no pleural effusion or pneumothorax. An xray of the abdomen was also negative. Claimant was diagnosed with hypokalemia, renal azotemia and leukocytosis. Claimant was given IV potassium and was discharged in good condition on March 29, 2012.

15. An April 10, 2012 examination by the claimant's cardiologist indicates that her blood pressure was 130/70. She had regular rate and rhythm with no murmurs, gallops or rubs. Her cholesterol was at goal with an LDL in the 50's. She was continued on Crestor. She had significant coronary artery disease and was recommended for a Dobutamine stress echo test.

16. On April 24, 2012, the claimant underwent the Dobutamine stress echo test. The test was normal.

17. On April 25, 2012, the claimant underwent a left carotid endarterectomy to address a 70% stenosis of the left internal carotid artery. Throughout hospital stay, the claimant remained neurologically intact. Claimant was

moving all extremities well and her cranial nerves II – XII were intact. Her incision was dry and intact, with some ecchymosis around the incision on the left side of the neck with minimal swelling. Claimant was ambulating well and able to turn in both directions. Her condition at discharge on April 26, 2012 was stable.

18. An independent psychiatric/psychological medical evaluation was conducted on July 24, 2012. Claimant reported increasing depression. Claimant had good contact with reality. She complained of chronic pain. Her thoughts were well organized and goal directed. There was no evidence of psychotic symptoms. She strongly endorsed feelings of worthlessness, hopelessness, and suicidal ideation. Her affect was tearful and dysphoric. She was oriented x 3. Claimant was diagnosed with major depressive disorder, recurrent, severe, without psychotic features; cannabis dependence and assigned a GAF of 48.

19. On November 17, 2012, an MRI of the lumbar spine was conducted. There was scoliosis with multilevel degenerative lumbar disc disease and facet joint arthropathy; left foraminal and lateral recess herniated disc at L3 – L4 with impingement; right foraminal herniated disc with impingement seen at L4 – L5 with severe facet joint arthropathy; and left paracentral and inferior broad-based herniated disc with impingement seen at L5 – S1.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program 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 Program Reference Manual (RFT).

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 CFR 416.901). DHS, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses. Michigan administers the federal Medicaid program. In assessing eligibility, Michigan utilizes the federal regulations.

Relevant federal guidelines provide in pertinent part:

"Disability" is:

> ...the inability to do any substant ial gainful activity by reason of any medically determinable ph ysical 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.

The federal regulations require t hat seve ral considerations be analyzed in s equential order:

> ...We follow a set order to determine whether y ou are disabled. We review any current work activity, the severity of your impairment(s), your resi dual functional capacity, your past work, and your age, educati on and work experien ce. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CF R 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. If you are working and the wo rk you are doing is substantial gainful activity, we will find that you are not dis abled regardless of your medical condition or your age, education, and work experienc e. 20 CFR 416.920(b). If no, the analysis continues to Step 2.

2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in deat h? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.909(c).

3. Does the impairment appear on a special Listing of Impairments or are the clie nt's symptoms, signs, and laboratory findings at least equiv alent in severity to the set of medical findings s pecified for the listed impairment that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(d).

4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analys is continues to Step 5. Sections 200.00-204.00(f)?

5. Does the client hav e the Residual Func tional Capacity (RFC) to perform other work according to the guidelines set

> forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application claimant has the burden of proof pursuant to:

> ...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

> ...Medical reports should include --
>
> (1) Medical history.
>
> (2) Clinical findings (such as the results of physical or mental status examinations);
>
> (3) Laboratory findings (such as sure, X-rays);
>
> (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).
>
> ...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a)
> Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

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. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has an impairment and the nature and

extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

> (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
>
> (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
>
> (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e). Statements about pain or other symptoms do not alone establish disability. 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. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

The law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful activity can be achieved, a finding of not disabled must be rendered.

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C). 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 limitations are

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. 20 CFR 416.920(a)(2). Chronic mental disorders, structured settings, medication and other treatment, and the effect on the overall degree of functionality are 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 and individual's degree of functional limitation. 20 CFR 416.920a(c)(4).

Applying the sequential analysis herein, claimant is not ineligible at the first step as claimant is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities in claimant's favor, this Administrative Law Judge (ALJ) finds that claimant meets both. The analysis continues.

The third step of the analysis looks at whether an individual meets or equals one of the Listings of Impairments. 20 CFR 416.920(d). Claimant does not. The analysis continues.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity. 20 CFR 404.1520(e) and 416.920(e). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered. 20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8.

Claimant's blood pressure and cholesterol appear to be controlled through medication. Claimant's hypokalemia, renal azotemia and leukocytosis resolved during her hospital stay in March, 2012 and would not meet any kind of durational requirement. Claimant's heart condition was also resolved by the surgical intervention and would not meet durational requirements.

The condition that meets duration/severity requirements is claimant's back problems. Claimant's MRI showed scoliosis with multilevel degenerative lumbar disc disease and facet joint arthropathy; left foraminal and lateral recess herniated disc at L3 – L4 with impingement; right foraminal herniated disc with impingement seen at L4 – L5 with severe facet joint arthropathy; and left paracentral and inferior broad-based herniated disc with impingement seen at L5 – S1. There is no evidence of muscle atrophy or documentation of ongoing attempts at treatment (i.e. physical therapy, steroid injections, pain treatment, etc). There are no neurological abnormalities documented in the medical record. Claimant is independent in her activities of daily living, according to the DHS-49 that she completed. Claimant's testimony at hearing was that she could walk

for a couple of hours and could stand for 10 – 15 minutes at a time. Claimant could sit for 30 minutes at one time and could carry 20 – 30 pounds.

Claimant's complaints and allegations concerning impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who has the physical and mental capacity to engage in light work activities on a regular and continuing basis.

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f) and 416.920(f). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA. 20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965. If the claimant has the residual functional capacity to do his/her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

In this case, this ALJ finds that claimant cannot return to past relevant work on the basis of the medical evidence. The claimant's previous work experience as a home health aide is medium in exertional level as defined in the Dictionary of Occupational Titles. The claimant is not capable of medium exertional work, and the analysis continues.

At the last step of the sequential evaluation process, the Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. 20 CFR 404.1520(g) and 416.920(g).

Claimant has submitted insufficient objective medical evidence that she lacked the residual functional capacity to perform light work if demanded of her. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant had no residual functional capacity to perform other work. Claimant is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical evidence that she could not perform light work. Under the Medical-Vocational guidelines, an individual closely approaching advanced age (age 51) with a high school education or more and a semi-skilled (not transferrable) work history who can perform at least light work is not considered disabled pursuant to Medical-Vocational Rule 202.14.

The 6th Circuit has held that subjective complaints are inadequate to establish disability when the objective evidence fails to establish the existence of severity of the alleged pain. *McCormick v Secretary of Health and Human Services*, 861 F2d 998, 1003 (6th cir 1988).

As noted above, claimant has the burden of proof pursuant to 20 CFR 416.912(c). Federal and state law is quite specific with regards to the type of evidence sufficient to show statutory disability. 20 CFR 416.913. This authority requires sufficient medical evidence to substantiate and corroborate statutory disability as it is defined under federal and state law. 20 CFR 416.913(b), .913(d), and .913(e); BEM 260. These medical findings must be corroborated by medical tests, labs, and other corroborating medical evidence that substantiates disability. 20 CFR 416. 927, .928. Moreover, complaints and symptoms of pain must be corroborated pursuant to 20 CFR 416.929(a), .929(c)(4), and .945(e). Claimant's medical evidence in this case, taken as a whole, simply does not rise to statutory disability by meeting these federal and state requirements. 20 CFR 416.920; BEM 260, 261.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were correct.

Accordingly, the department's determination in this matter is **UPHELD**.

/s/

Suzanne L. Morris
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 10, 2013

Date Mailed: July 10, 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 erro r, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
- the failure of the ALJ to address ot her relevant iss ues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at

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

SLM/hj

cc: [redacted]