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

IN THE MATTER OF:

[redacted]

Reg. No.: 2013-27092
Issue No.: 2009
Case No.: [redacted]
Hearing Date: July 24, 2013
County: Tuscola

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Ad ministrative Law Judge upon Claimant's request for a hearing made pursuant to Mi chigan Compiled Laws 400.9 and 400.37, which govern the administrativ e hearing and appeal process. After due not ice, an in-person hearing was c ommenced on July 24, 2013, at the Tuscola County DHS office. Claimant, represented by [redacted] of [redacted] personally appeared and testified. Participant s on behalf of the Departm ent of Human Services (Department) included Eligibility Specialist [redacted] [redacted]

During the hearing, Claimant wa ived the time period for the i ssuance 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 October 8, 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 Serv ices (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 com petent, material and substantial evidence on the whole record, finds as material fact:

(1) On April 13, 2012, Claimant filed an applic ation for MA-P and Retro-MA benefits alleging disability.

(2) On July 12, 2012, t he Medic al Review T eam (MRT) denied Claimant's application for MA-P and Retro-MA i ndicating that she was capable of performing other work. (Depart Ex. A, pp 1-2).

(3) On July 17, 2012, the department caseworker sent Claimant notice that her application was denied.

(4) On January 24, 2013, Claimant's authorized representative filed a request for a hearing to contest the department's negative action.

(5) On March 26, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform a wide range of light work. (Depart Ex B).

(6) Claimant has a history of cardiac disease, myocardial infarction, hypertension, cirrhosis, anemia, chronic obstructive pulmonary disorder (COPD), bipolar disorder, schizophrenia and depression.

(7) Claimant is a 46 year old woman whose birthday is [redacted]. Claimant is 5'1" tall and weighs 180 lbs. Claimant completed the ninth grade and has not worked since 2009.

(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).

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 2009. 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 cardiac disease, myocardial infarction, hypertension, cirrhosis, anemia, chronic obstructive pulmonary disorder (COPD), bipolar disorder, schizophrenia and depression.

On [redacted], Claimant was admitted to the hospital with acute liver failure, most likely secondary to her alcoholic liver disease and cirrhosis. She underwent blood transfusions. She was started on vitamin K to help correct her coagulopathy, blood transfusions, and lactulose for the high ammonia level. Claimant was discharged home in satisfactory condition on [redacted] with a diagnosis of: alcoholic liver disease, hyperbilirubinemia, hypertension, alcohol abuse, heart failure history, myocardial infarction [redacted]

On [redacted], Claimant presented to the hospital with vaginal bleeding for the past several weeks. She was admitted to the hospital and given over 4 units of packed red blood cells. She had an endometrial biopsy as well as a pap smear done during the

hospitalization. She has a history of cor onary artery diseas e as well as alcoholic cirrhosis and chronic diastolic cardiomyopathy. She had a nuclear stress test on 3/12/11 which revealed no perfusion abnormalities with a normal left ventricular ejection fraction. The echocardiogram on 3/12/11 showed a left vent ricular systolic ejection fra ction at 60 to 65%, normal left ventricular systolic func tion, impaired relaxation pattern of l eft ventricular diastolic f illing with mild mitr al valve regurgitation and mild aortic valv e sclerosis without any stenos is. Claimant was disc harged home on 3/13/11 in stable condition with a diagnosis of: dy sfunctional uterine bleeding, ac ute blood loss anemia, coronary artery disease, alcoholic cirrhosis and chronic diastolic dysfunction.

On [redacted], Claimant had a coronary ar tery bypass. Her stay was extended for respiratory distress. BiPA P was initiated on postoperative day two, but eventually reintubation was nec essary on postoperative day three due to respirat ory distress. She remained intubated in the ICU for numerous days due to pulmonary congestion, edema, and pneumonia. After extubating her the second time, her resp iratory status improved. She went through physical therapy and once ambulatin g on her own, she was discharged on [redacted] wit h a diagnosis of: status post coronary artery bypass grafting.

On [redacted], Claimant's c ardiologist completed a Medical Ex amination Report. The cardiologist diagnosed Claimant with hypercholeste rolemia, hy pertension, myocardial infarction, chest pain and an abno rmal EKG. The cardiologist opined that Claimant's condition was stable and she was able to meet her own needs in the home.

On [redacted] Claimant's treating physician comple ted a Medical Examination Report. The physician diagnos ed Claimant with anxiety, depre ssion, bipolar disorder, hypertension and cirrhosis. T he physician indicated Claimant's liv er was enlarged and she was having mood swings, crying spells and anxiety. The physician opined Claimant's condition was stable and she was able to meet her needs in the home.

On [redacted] Claimant was admitted to the hospit al following emergency room evaluation for low hemoglobin. Claimant has a history of menorrhagia, hypermenorrhea and had outpatient blood testing that showed low hemoglobin. S he was sent to the emergency room and hemoglobin wa s found to be 7.8 grams. S he was giv en two unit s of packed red blood c ells a nd repeat hemoglobin was 9.4. She was disc harged home on March 12, 2013, in stable c ondition with a diagnos is of: acute blood los s anemia, menorrhagia, hypertension, hist ory of congestive heart failure, history of cirrhosis of the liver and a history of COPD.

On [redacted] an echocardiogram reveal ed a dilated left ventricle with mildly impaired f unction wit h a left ventricle ejec tion fraction of 45-50%, mild aortic valve regurgitation and mild-to-moderate mitral regurgitation present.

On [redacted] a pelvic ultrasound showed a somewh at increased echogenicity seen as a halo s urrounding the endom etrium which appears of norma l thickness. Portions of

the endometrium are indistinct and the findings are suspicious for adenomyosis. There is also a small subserosal uterine fibroid and bilateral simple appearing ovarian cysts.

On [redacted] Claimant was seen regarding the repair of a ventral hernia that occurred after her open heart surgery. Scars from previous drains were noted in the upper abdomen and displayed a xiphoid defect that was reducible indicative of an incisional hernia extending from her sternotomy incision.

On [redacted], results from Holter monitoring indicated the predominant rhythm is normal sinus rhythm. Rare supraventricular ectopic beats including a 5 beat run of supraventricular tachycardia and a 3 beat run of supraventricular tachycardia with a maximum rate of 146 beats per minute. She had rare sinus bradycardia occurring at night which may be normal for her age. The supraventricular tachycardia may be the cause of her palpations.

On [redacted] Claimant underwent a psychological evaluation. Throughout the evaluation Claimant was cooperative and attentive. Results of the mental status examination revealed abnormalities in concentration, general knowledge, memory, abstract reasoning and calculation tasks. At this time she meets diagnostic criteria for Bipolar Disorder, Posttraumatic Stress Disorder and Panic Disorder. Her ability to relate and interact with others, including coworkers and supervisors is impaired. Her depression and distress could affect her interpersonal relationships in the workplace. Her ability to understand, recall and complete tasks and expectations does appear to be somewhat impaired. She is able to perform simple tasks with no major limitations. She should not struggle with familiar routines and tasks, but she may struggle with those that have multiple steps and increased complexity. Her ability to maintain concentration does seem somewhat impaired. As a result of her emotional state she may often be distracted and her effectiveness and performance will likely be limited and slowed. Her ability to withstand the normal stressors associated with a workplace setting is somewhat impaired. Diagnosis: Axis I: Bipolar Disorder, Posttraumatic Stress Disorder, Panic Disorder with Agoraphobia, Axis II: No diagnosis; Axis III: Asthma, hypertension and chronic obstructed pulmonary disease; Axis IV: Financial problems, unemployment, social isolation; Axis V: GAF=55. Prognosis is poor.

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 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 cardiac disease, myocardial infarction, hypertension, cirrhosis, anemia, chronic obstructive pulmonary disorder (COPD), bipolar disorder, schizophrenia and depression.

Listing 1.00 (musculoskeletal system), Listing 3.00 (respiratory system), Listing 4.00 (cardiovascular system), Listing 7.00 (hematological disorders) and Listing 12.00 (mental 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.

Claimant has a history of less than gainful employment. As such, there is no past work for Claimant to perform, nor are there past work skills to transfer to other work occupations. 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 46 years old and was, thus, considered to be a younger individual for MA-P purposes. Claimant has a ninth grade education. Once Claimant reaches Step 5 in the sequential review process, Claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services,* 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that Claimant has the residual functional capacity for substantial gainful activity.

The medical information indicates that Claimant suffers from cardiac disease, myocardial infarction, hypertension, cirrhosis, anemia, chronic obstructive pulmonary disorder (COPD), bipolar disorder, schizophrenia and depression.

Claimant testified credibly that she has a limited tolerance for physical activities and is unable to stand or sit for lengthy periods of time. Claimant admitted that she isolates herself and is either crying or angry.

Claimant underwent an independent psychological evaluation on April 9, 2013, on behalf of the department. Diagnosis: Axis I: Bipolar Disorder, Posttraumatic Stress Disorder, Panic Disorder with Agoraphobia, Axis II: No diagnosis; Axis III: Asthma, hypertension and chronic obstructed pulmonary disease; Axis IV: Financial problems, unemployment, social isolation; Axis V: GAF=55. According to the DSM-IV, 4th Ed., a GAF of 55 indicates moderate symptoms (e.g., flat affect and circumstantial speech, occasional panic attacks) *or* moderate difficulty in social, occupational, or school functioning (e.g., few friends, conflicts with peers or co-workers).

The examining psychologist also opined that Claimant's prognosis is poor. Results of the mental status examination revealed abnormalities in concentration, general knowledge, memory, abstract reasoning and calculation tasks. Results of the mental status examination revealed abnormalities in concentration, general knowledge, memory, abstract reasoning and calculation tasks. Claimant's mental limitations, when taken together with her declining ejection fraction, and numerous blood transfusions, rise to the level of disability.

Claimant is 46 years old, with a ninth grade education. Claimant's medical records are consistent with her testimony that she is unable to engage in even a full range of sedentary work on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986).

The Department has failed to provide vocational evidence which establishes that Claimant has the residual functional capacity for substantial gainful activity and that given Claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which Claimant could perform despite Claimant's limitations. Accordingly, this Administrative Law Judge concludes Claimant is disabled for purposes of the MA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining Claimant is not currently disabled for MA/Retro-MA eligibility purposes.

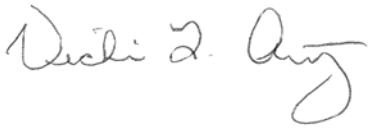
Accordingly, the department's decision is **REVERSED**, and it is ORDERED that:

1. The department shall process Claimant's April 13, 2012, MA/Retro-MA application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.

2. The department shall review Claimant's medical condition for improvement in October, 2014, unless her Social Security Administration disability status is approved by that time.

3. The department shall obtain updated medical evidence from Claimant's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

It is SO ORDERED.



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

Date Signed: October 22, 2013

Date Mailed: October 22, 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 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 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]