

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-48874
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: November 19, 2013
County: Jackson

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, an in-person hearing was held at the Jackson County Department of Human Services (Department) office. Participants on behalf of Claimant included [REDACTED] of [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED].

ISSUE

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

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 December 19, 2012, Claimant filed an application for MA-P and Retro-MA benefits alleging disability.
- (2) On February 22, 2013, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that she was capable of other work, pursuant to 20 CFR 416.920(f). (Depart Ex. C, pp 1-2).
- (3) On February 28, 2013, the department caseworker sent Claimant notice that her application was denied.
- (4) On May 17, 2013, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On July 8, 2013, the Medical Review Team (MRT) approved Claimant's 4/1/13 application for MA-P and Retro-MA based on her inability to do other work, with a starting date of January, 2013, and a review date of July, 2014. (Depart Ex. D, pp 1-2).
- (6) On July 24, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform her past relevant work as a customer service representative. (Depart Ex. B, pp 1-2).
- (7) Claimant has a history of fibromyalgia, chronic fatigue syndrome, anemia, morbid obesity, coronary artery disease, degenerative disc disease, affective disorder, depression, anxiety, asthma, gastroesophageal reflux (GERD), myocardial infarction, moderate hiatal hernia, severe obstructive sleep apnea, restless leg syndrome, urinary incontinence, hypertension, chronic obstructive pulmonary disease (COPD), lower extremity edema, lymphedema, pneumonia and cellulitis.
- (8) Claimant is a 53 year old woman whose birthday is [REDACTED]. Claimant is 5'3" tall and weighs 298 lbs. Claimant completed high school.
- (9) Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

CONCLUSIONS OF LAW

As an initial matter, there is a Social Security decision dated 8/7/13, denying Claimant's application for SSI. However, Claimant appealed the decision in August, 2013, therefore, the SSA decision denying Claimant's application for disability is not binding.

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 November, 2010. 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 fibromyalgia, chronic fatigue syndrome, anemia, morbid obesity, coronary artery disease, degenerative disc disease, affective disorder, depression, anxiety, asthma, gastroesophageal reflux (GERD), myocardial infarction, moderate hiatal hernia, severe obstructive sleep apnea, restless leg syndrome, urinary incontinence, hypertension, chronic obstructive pulmonary disease (COPD), lower extremity edema, lymphedema, pneumonia and cellulitis.

On [REDACTED], Claimant was admitted for laparoscopic ventral hernia repair. She was discharged on 12/6/12, with a diagnosis of incarcerated incisional hernia, reducible umbilical hernia, hypertension, anxiety, depression, asthma, fibromyalgia, sleep apnea and obesity.

On [REDACTED] Claimant presented to the hospital with shortness of breath and was admitted. She was discharged on [REDACTED] in stable condition with a diagnosis of acute asthma exacerbation, bronchopneumonia, bilateral lower extremity cellulitis, resolving, and morbid obesity.

On [REDACTED] Claimant was admitted to the hospital with chest pain and shortness of breath. The echocardiogram showed a normal size left ventricular thickness with an ejection fraction of more than 55%, a moderately enlarged left atrium, mild to moderate mitral regurgitation, moderate tricuspid regurgitation and mild pulmonary hypertension. Her primary discharge diagnoses were: (1) non-ST elevation myocardial infarction, status post cardiac catheterization; minimal coronary artery disease, no further intervention is needed; (2) possible aspiration pneumonia or recurrent pneumonia; upper GI series was done to rule out underlying aspiration, which showed mild gastroesophageal reflux and moderate hiatal hernia; (3) dysphagia, possible secondary to moderate hiatal hernia; (4) morbid obesity; (5) urinary incontinence; (6) urinary tract infection; (7) bilateral lower extremity cellulitis, acute on chronic, improved; (8) hypertension; (9) deconditioned; (10) dyslipidemia; (11) depression, Claimant's Cymbalta was increased; (12) obstructive sleep apnea, on CPAP; (13) overactive urinary bladder with stimulator. A psychiatric consultation revealed Claimant appeared older than her stated age with grossly obese build. She was showing significant degree of psychomotor retardation. Her speech was low tone and soft-pitched. At times she appeared anxious and nervous. She described her mood as very sad and depressed. Her affect was tearful and sad. Her cognition, insight and judgment were fairly intact. Diagnosis: Axis I: Major depressive disorder, severe, recurrent, without psychotic features; Generalized anxiety disorder; Axis II: Deferred; Axis III: As dictated by medical team; Axis IV: Moderate to severe; Axis V: GAF=45. Claimant was discharged on 5/11/13 with a home care visiting nurse.

On [REDACTED] Claimant's treating physician completed a medical examination of Claimant. The physician opined that Claimant appears chronically ill. Dorsalis pedis right decreased. Posterior tibial right decreased. She has bilateral lower leg, dry, scaling, red, edematous. Her affect is depressed. The treating physician opined Claimant's condition is deteriorating. She has physical limitations in that she can occasionally lift 10 pounds but cannot use her feet/legs to operate foot/leg controls or use her hands for fine manipulating. The physician based Claimant's physical restrictions on the 4+ pitting edema of both legs and chronic obstructive pulmonary disease. The physician also opined that Claimant's needs cannot be met in the home and she needs assistance with grocery shopping, laundry and house cleaning.

On [REDACTED] Claimant was admitted with complaints of a cough. She was diagnosed with having resolving pneumonia, bronchitis and a urinary tract infection. She was discharged on [REDACTED] with diagnoses of urinary tract infection, chronic urinary incontinence, resolving pneumonia, acute bronchitis, coronary artery disease, hypertension, morbid obesity and chronic anemia.

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 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 fibromyalgia, chronic fatigue syndrome, anemia, morbid obesity, coronary artery disease, degenerative disc disease, affective disorder, depression, anxiety, asthma, gastroesophageal reflux (GERD), myocardial infarction, moderate hiatal hernia, severe obstructive sleep apnea, restless leg syndrome, urinary incontinence, hypertension, chronic obstructive pulmonary disease (COPD), lower extremity edema, lymphedema, pneumonia and cellulitis.

Listing 1.00 (musculoskeletal system), Listing 2.00 (special senses and speech), Listing 3.00 (respiratory system), Listing 4.00 (cardiovascular system), 5.00 (digestive system), Listing 6.00 (genitourinary impairments), Listing 8.00 (skin disorders), Listing 11.00 (neurological), Listing 12.00 (mental disorders), Listing 13.00 (malignant neoplastic diseases) 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 customer service representative. 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 uses a walker since her heart attack in May, 2013. She is able to walk short distances without the walker, however she falls a lot. She is under a physician's restriction not to lift more than one pound. 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, medical records, and current limitations, 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

53 years old and was, thus, considered to be an individual approaching advanced age for MA-P purposes. Claimant had completed high school. 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).

In this case, the evidence reveals that Claimant suffers from fibromyalgia, chronic fatigue syndrome, anemia, morbid obesity, coronary artery disease, degenerative disc disease, affective disorder, depression, anxiety, asthma, gastroesophageal reflux (GERD), myocardial infarction, moderate hiatal hernia, severe obstructive sleep apnea, restless leg syndrome, urinary incontinence, hypertension, chronic obstructive pulmonary disease (COPD), lower extremity edema, lymphedema, pneumonia and cellulitis. She needs surgery for the hiatal hernia. She is very depressed, withdrawn and hesitant. She is unable to make or keep eye contact and is short of breath. She does not leave the house due to her incontinence. Moreover, Claimant's treating physician opined that Claimant's condition is deteriorating and she is unable to meet her own needs in the home. Because the treating physician's opinion is well supported by medically acceptable clinical and laboratory diagnostic techniques, it has controlling weight. 20 CFR 404.1527(d)(2). Based on Claimant's age of 53 years, a high school education level and an unskilled work history, it is found that Claimant meets Medical-Vocational Grid Rule 201.12, and Claimant is disabled for purposes of the MA-P program at Step 5.

DECISION AND ORDER

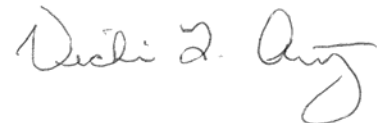
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining Claimant is not currently disabled for MA/Retro-MA eligibility purposes.

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

1. The department shall process Claimant's December 19, 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 November, 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: November 20, 2013

Date Mailed: November 20, 2013

NOTICE OF APPEAL: The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

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The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

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

VLA/las

cc:

