

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-40556
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: September 12, 2013
County: Bay

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, a tele phone hearing was commenced on September 12, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Family Independence Manager [REDACTED]

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 November 30, 2012, Claimant filed an application for MA-P and Retro-MA benefits alleging disability.
- (2) On February 15, 2013, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that she was capable of performing other work. (Depart Ex. A, pp 1-2).
- (3) On February 21, 2013, the department caseworker sent Claimant notice that her application was denied.
- (4) On April 9, 2013, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On June 19, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform unskilled light work. (Depart Ex B, pp 1-2).
- (6) Claimant has a history of hydrocephalus, learning disabilities, spine impairment, depression, epilepsy, migraines and asthma.
- (7) Claimant is a 23 year old woman whose birthday is [REDACTED] Claimant is 4'8" tall and weighs 100 lbs. Claimant completed a high school education through special education.
- (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 April, 2013. 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 hydrocephalus, learning disabilities, spine impairment, depression, epilepsy, migraines and asthma.

On January 26, 2012, Claimant underwent a psychological evaluation by the [REDACTED]. She denied any psychiatric hospitalizations or substance abuse treatments. She has been in college 3 years and is majoring in English. Her posture and gait were unremarkable. Mood was normal. Mannerisms were cooperative. There was no unusual motor activity or hyperactivity. Throughout the evaluation her emotional reactions appeared normal. Included in her chart were functional reports completed in 2008. She was eligible for special education service due to learning disabilities. She earned a full scale IQ of 87. A psychiatric examination was provided by [REDACTED] from 2011 in which she was diagnosed with Adjustment Disorder and Mood Disorder. Also provided was a mental health assessment completed by [REDACTED] in July, 2011. She was diagnosed with mood disorder. Throughout the evaluation she was cooperative and attentive. Results of the mental status examination revealed difficulties with calculation tasks. The examining psychologist opined she meets diagnostic criteria for Mood Disorder. She has some depression that seems to have been present periodically throughout her life. However, it is not clear if it was episodic or in response to her struggle with her physical limitations. It may also have been related to a dysthymic disorder of varying severity. However, many of her symptoms are currently remised due to medication. While she has a history of learning difficulties, she was extremely articulate. Her ability to relate and interact with others, including coworkers and supervisors, is fair. Her ability to understand, recall, and complete tasks and expectations is a bit impaired. While she is able to perform simple tasks with no major limitations, she may struggle with tasks that have multiple steps and increased complexity. Her ability to maintain concentration was fair. Her ability to withstand the normal stressors associated with a workplace setting is fair. Diagnosis : Axis I: Major depressive disorder, recurrent, mild; Learning disorder; Axis III: Epilepsy, a history of hydrocephalus as an infant, slow hand eye coordination, visual impairment,

hearing impairment; Axis IV: Financial problems, unemployment; Axis V: GAF=70. Claimant's prognosis is fair and she is able to manage her benefit funds.

On December 10, 2012, Claimant's treating physician opined that Claimant's condition was stable, she was able to meet her own needs in the home but she would never have a normal functioning level in the work place.

On February 21, 2013, Claimant underwent a neurological evaluation at the request of her treating physician. The neurologist last saw Claimant five years ago. The neurologist opined Claimant is a complicated case of a child with epilepsy in the background of development problems and probable cerebral palsy. She has a number of different issues including (1) seizures; she has had no recurrence; (2) headaches; these have been limited; and (3) her mood has been stable. Her neurological exam was characterized by some esotropia. She sees only out of one eye. She has difficulty tracking. She has hyperreflexia. She is independent with gait and station.

On July 2, 2013, Claimant underwent a psychological assessment by a Licensed Master Social Worker. Diagnosis: Axis I: Panic disorder with Agoraphobia; Axis III: Hydrocephalous, Asthma, Epilepsy, Seasonal allergies, joint pain, migraines and vision difficulties; Axis IV: Problems related to the social environment, educational problems; Axis V: GAF=55.

On August 28, 2013, Claimant met with her therapist and indicated she had started school the previous day and while she had some difficulties finding her classes, she found them and stayed the entire day. Claimant reported she was going to drop one of her classes to prevent becoming overwhelmed the entire semester. Claimant also stated that she walked to her beauty salon, has her hair done and then walked to the local store.

On September 9, 2013, Claimant saw her treating physician for abdominal pain. Claimant had tenderness in the epigastric area, in the periumbilical area, in the right lower quadrant and in the left lower quadrant. The abdomen was not firm. No guarding. No masses palpated. The abdomen was normal to percussion. Her mood and affect were normal. She was prescribed Omeprazole and told to return in a month.

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 hydrocephalus, learning disabilities, spine impairment, depression, epilepsy, migraines and asthma.

Listing 2.00 (special senses and speech), Listing 3.00 (respiratory system), Listing 11.00 (neurological) 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 23 years old and was, thus, considered to be a younger individual for MA-P purposes. Claimant has a high school education through special education. 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 hydrocephalus as an infant, learning disabilities, possible cerebral palsy, depression, epilepsy, migraines and asthma. The objective medical evidence notes hand eye coordination impairments.

Claimant credibly testified that she is currently attending college. Claimant stated that she was taking Zoloft and Klonopin and she felt they were working for her depression and anxiety. Claimant also reported taking Tegretol for seizures and felt it was working because she has not had a seizure since February, 2013.

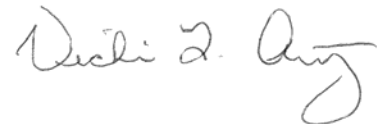
In light of the foregoing, it is found that Claimant maintains the residual functional capacity for work activities on a regular and continuing basis which includes the ability to meet the physical and mental demands required to perform at least sedentary work as defined in 20 CFR 416.967(a). After review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.27, 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: January 2, 2014

Date Mailed: January 2, 2014

NOTICE OF AP PEAL: 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.

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:

