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

### IN THE MATTER OF:



Reg. No.: 2013-48021

Issue No.: 2009

Case No.: Hearing Date:

October 3, 2013

County: Berrien

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

## **HEARING DECISION**

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law J udge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 t o 431.250; and 45 CF R 205.10. After due notice, a telephon e hearing was held on October 3, 2013, from Lansi ng, Michigan. Claimant appeared and testified. Participants on behalf of the Department of Human Serv ices (Department) included Family Independence Manager

During the hearing, Claimant wa ived the time period for the i ssuance of this decision in order to allow for the submission of addition al medical evidence. No new evidence was received. Therefore, this matter is now before the undersigned for a final decision.

### ISSUE

Whether the Department properly denied Claimant's applic ation 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 November 5, 2012, Claimant f iled an applic ation for MA-P and Retro-MA benefits alleging disability.
- (2) On April 10, 2013, the Medical Re view Team (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 April 15, 2013, the department caseworker sent Cla imant notice that her application was denied.

- (4) On May 14, 2013, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On July 26, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform light, unskilled work. (Depart Ex B, pp 1-2).
- (6) Claimant has a his tory of sciat ica, slipped disc, sco liosis, anxiety, osteoarthritis, degenerative disc disease and lumbago.
- (7) Claimant is a 30 year old wom an whos e birthday is Claimant is 5'4" tall and weighs 200 lbs. Claimant has a high schoo l education.
- (8) Claimant last worked in 2006.
- (9) Claimant had applied for Social Securi ty 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 Adminis trative Manual (BAM), the Bridges Eligibilit y 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 im pairment which can be expected to result in death or which has lasted or can be expect ed 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 esta blish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinica l/laboratory findings, diagnosis/prescri bed treatment, prognosis for recovery and/or medical assessment of ability to do work-related ac tivities o r ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 413 .913. An individual's subjective pain com plaints ar e not, in and of themselves, sufficient to establish disab ility. 20 CF R 416.908; 2 0 CFR 4 16.929(a). Similarly, conclusor y 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 function on all 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 cons ider an individual's current work activit y; 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 det ermine whether an individual can perform past relev ant work; and residual functional capacity along with vocational factors (e.g., age, education, and work exp erience) 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 disable ed. 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 indi vidual's residual functional capacity is assessed before moving from Step 3 to St ep 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual f unctional capacity is the most an indiv idual can do d espite the limitations based on all relevant evidence. 20 CF R 945(a)(1). An individual's residu al uated at both Steps 4 and 5. 20 CFR functional capacity assessment is eval 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individ ual 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 indi vidual has the responsibility to prove disability. 20 CFR 4 16.912(a). An impairment or combination of impairments is not severe if it does not signific antly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a ). The in dividual 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 i ndividual's current work activity. In the record presented, Claimant is not involved in substantial gainful activity and testified that she has not worked since 2006. Theref ore, she is not dis qualified 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 seevere. 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:

- 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 admin istrative 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 al leges disability due to sciat ica, slipped dis c, scolios is, anxiety, osteoarthritis, degenerative disc disease and lumbago.

In December, 2012, Claimant was hospitaliz ed for 5 days with right side sciatica. She presented to the hos pital with bilateral lower extremity leg pain. She stated she felt weak and unable to walk. She was seen in the emergency department twice in the past week where she was given prednisone, lort ab and k etorolac. She also reported that she has chronic low back pain and a history of scoliosis. She had been diagnosed with ADHS, mania and bipolar disorder and prescribed Xanax and Celexa, but was no longer taking bec ause she no longer had Medicaid. She denied any mood change or depression. The MRI shows degenerative joint disease with L3-S1 disc protrusions. The neurosurgeon did not feel that Claimant's radicular complaints fit with the isolated S1 radiculopathy. No surgical intervention was recommended. She was instructed to continue taking Percocet and Ibuprofen and discharged in fair condition.

In February, 2013, Claimant un derwent a psychological ev aluation on behalf of the Department. Claimant reports degenerative disc disease, sciatic nerve damage, a cyst in her lower right back and a history of ce rvical cancer. She also reports being diagnosed with posttraumatic st ress disorder. She reports being psychotic. However, none of these issues were noted during her interaction with the psychologist. She admits to using alcohol sporadically but appears to abuse alcohol when she does drink. She also reports a history of polysubstance abuse and states that she last used drugs four days prior to this evaluation. This is of concern in that she was recently releas ed

from rehab. Her mental stat us indicates a dependent individual with a low s elf-esteem. She did demonstrate some degree of pre ssured speech and admits to considerin suicide on month prior to th is evaluation. Her emotiona I reaction is flat. She demonstrates adequate short-term memory but her abstract reasoning was limited. Her common judgment was also somewhat limited. The examining psychologist opined that Claimant appears to be a subs tance dependent individual with a history of chronic substance abuse. She does ap pear to be emotionally imma ture. She reports being diagnosed with numerous psychiatric issues but none of the diagnostic criteria for these issues were noted by the examining psych ologist. Diagnosis: Axis I: Poly substance Dependence; Axis II: Personalit y Disorder; Axis III: Degenerative Disc Disease; Sciatic Nerve Damage, Cyst in Lower Back, and history of Cervical Cancer (by report); Axis IV: Occupational and Social difficulties; Axis V: GAF=52. According to her Mental Residual Functional Capacity Assessment, Claimant wa s markedly limited in her ability to maintain attention and concentration for exte nded periods, work in coordination with or proximity to others without being distracted by them and to se t realistic goals or make plans independently of others. The psychologist opined that Claimant would be unable to manage her own benefit funds.

As previously noted, Claimant bears the burden to pr esent sufficient objective medical evidence to substantiate the alleged disab ling impair ment(s). As summarized abov e, Claimant has presented some limited medical evidence establishing that she does have some physical and mental limitations on her ability to perform basic work activities. The medical evidence has established that Cla imant has an impair ment, 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 seque ntial an alysis of a disability claim, the trier of fact must determine if the indiv idual's impairment, or combination of impairm ents, is listed in Appendix 1 of Subpart P of 20 CF R, Part 404. Claim ant has alleged physical an d mental disabling im pairments due to sciatica, s lipped disc, scoliosis, anxiety, osteoarthritis, degenerative disc disease and lumbago.

Listing 1.00 (musculoskeletal s ystem) 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 severily requirement of a listed impairment; therefore, Claimant cannot be found dis abled 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 f unctional capacity ("RFC") and pas t relevant em ployment. 20 CF R 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 lear n the position. 20 CF R 416.960(b)(1). Claimant has a history of less than gainful employment. As such, ther e 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 individua I's residual functional capace it and age. education, and work experience is consider ed to determine whet her an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of h earing, Claimant was 30 years old and was, thus, considered to be a younger individual for MA-P purposes. Claimant has a high school education. Disabi lity 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 em ployment. 20 CFR 416.960(2); Richardson v Sec of Health and Hum Services, 735 F2d 962, 964 (CA 6, 1984). While a vocational ex pert is not required, a finding supported by substantia I evidence that the indiv idual 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-Vocationa I quidelines 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 wil I not seriously affect the ability to adjust to other work. 20 CFR 416.963(c).

In this case, the evidence reveals that Cla imant suffers from sciatica, slipped disc, scoliosis, anxiety, osteoarthritis, degenerative disc disease and lumbago. The objective medical evidence notes no phy sical limitations. Mentally, Claim ant was found to be markedly limited in her ability to maintain attention and conce ntration for extende d periods, work in coordination with or proxim ity to others without being distracted by them and to set realistic goals or make plans independently of others.

In light of the foregoing, it is found that Claimant main tains the residual functional capacity for work activities on a regular and continuing basis which includes the ability to meet the physic al and ment al demands required to perform at least sedentary work as defined in 20 CF R 416.967(a), with the aforementioned ment al limitations taken into account. 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

Villi 2.

Date Signed: December 17, 2013

Date Mailed: December 17, 2013

**NOTICE OF AP PEAL**: The claimant may appeal the Dec ision and Order to Circu it Court within 30 days of the receipt of the Decision and Order or, i f a timely Request for Rehearing or Reconsiderati on was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing S ystem (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a par ty within 30 days of the mailing date of this Dec ision and Order. MAHS will not order a rehearing or reconsideration on the Department's mo tion where the final decis ion 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 disc overed evidence that existed at the time of the or iginal 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 clai mant must specify all reas ons 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

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