

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-13863
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: April 2, 2013
County: Wayne-19

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon the Claimant's request for a hearing made pursuant to Michigan Compiled Laws 400.9 and 400.37, which govern the administrative hearing and appeal process. After due notice, a telephone hearing was commenced on April 2, 2013, from Lansing, Michigan. Claimant personally appeared and testified along with friend, [REDACTED] Participant on behalf of the Department of Human Services (Department) was Eligibility Specialist [REDACTED]

ISSUE

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

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 6, 2011, Claimant filed an application for MA-P, Retro-MA and SDA benefits alleging disability.
- (2) On November 8, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA-P indicating that she had a non exertional impairment. SDA was denied because her physical or mental impairment did not prevent employment for 90 days or more. (Depart. Ex. 1-94).
- (3) On November 15, 2012, the department caseworker sent Claimant notice that her application was denied.

- (4) On November 26, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On January 25, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled indicating Claimant has the capacity to perform light exertional tasks of a simple and repetitive nature. (Depart Ex. B, pp 1-2).
- (6) Claimant has a history of a displaced left clavicle, uncontrolled hypertension, one kidney and chronic asthma.
- (7) Claimant is a 40 year old woman whose birthday is [REDACTED] Claimant is 5'7" tall and weighs 252 lbs. Claimant completed high school.
- (8) Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

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 December, 2008. 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 displaced left clavicle, uncontrolled hypertension, one kidney and chronic asthma.

On August 16, 2011, an MRI of Claimant's cervical spine revealed a reversal of the spinal curvature, possibly associated with injury. There were also disc injuries at the C2-C3, C4-C5, and C5-C6 levels, impinging upon the ventral thecal sac. There was a posterior disc protrusion at the C3-C4 and C6-C7 levels, impinging upon the ventral thecal sac. The MRI of Claimant's left shoulder showed interstitial type partial tears of the supraspinatus tendon worse involvement of the anterior fibers, along with moderate fibro-osseous capsular hypertrophy of the acromioclavicular joint with marrow edema at the contiguous articular margins. There was also mild subacromial bursitis and joint effusion.

On September 2, 2011, Claimant was seen at the pain clinic. Claimant was diagnosed with a severe form of AC joint tenderness. There was a widening gap of the AC joint

compared to her asymptomatic side which represented a direct trauma with ongoing irritation. She underwent an ultrasound-needle-guided AC joint injection. She was instructed to continue with her methadone on a regular basis along with short-acting opioid therapy for breakthrough pain.

On October 17, 2011, Claimant was evaluated by an orthopedic surgeon. She had a significant history of a motor vehicle injury accident in November, 2008. Since that time, she has had significant shoulder pain and discomfort. She had a fractured clavicle, which did heal, but she has had chronic pain ever since. She demonstrated decreased range of motion in all planes of the left shoulder with flexion, abduction, internal rotation and external rotation. She had severe pain with the motions. Otherwise, palpation over the left clavicle was tender. There was no edema or swelling. Strength in the left upper extremity was slightly diminished at the deltoid with abduction and flexion as well as extension. MRI of the left shoulder demonstrated interstitial type partial tears of the supraspinatus tendon, moderate fibro-osseous capsular hypertrophy at the acromioclavicular joint and marrow edema of contiguous articular margins and subacromial bursitis with joint effusion.

On December 23, 2011, Claimant followed up with her orthopedic surgeon regarding her left shoulder. She stated her shoulder was about the same. Physical examination of her left shoulder found that she still has to draw her shoulder up to get it moving. She could forward flex 140 degrees. She can abduct just shy of the horizon. Supraspinatus testing was painful to her. X-rays reviewed found the shoulder was reduced. There was a type III acromion. Subacromial space was maintained. She was diagnosed with left shoulder history of adhesive capsulitis with healed clavicle fractures and some impingement along with mild cervical spondylosis. She was still not cleared for surgery due to her blood pressure still being too high. Her prescriptions were refilled and she was encouraged to continue her home exercises.

On January 11, 2012, Claimant met with her primary care physician for medication refills. Claimant has been on methadone 5mg one tablet four times a day as well as Vicodin ES one tablet four times a day as needed for breakthrough pain. She stated that the medication helped somewhat to control her pain. She denied any side effects. She exhibited no drug aberrant behavior in the office. Her speech was fluent and she acted appropriately with staff. Since her last visit, she was seen and evaluated by her orthopedic surgeon. At this point, the surgeon stated that he was only giving Claimant a 50-50 chance that the surgery would help her left shoulder pain. For the moment, they are holding off on any surgical intervention, partially because her blood pressure has been elevated and not at a level the orthopedic surgeon wants for surgery. Her physician refilled the prescriptions, noting that Claimant was also experiencing depression due to her chronic pain. She was instructed to follow-up with her psychiatrist.

On April 20, 2012, Claimant saw her orthopedic surgeon for a reevaluation of her left shoulder. Claimant continued to have persistent pain and discomfort mostly anteriorwards. It was still difficult for her to do any type of prolonged overhead activity. She completed formal physical therapy, though she was still working with her home

program. She was utilizing her current pain medications which she stated were helping her. A physical examination of her shoulder demonstrated there was no obvious swelling. She was tender anteriorly. She could forward flex to about 100 degrees though with encouragement the orthopedist was able to get her to about 110 degrees. She could abduct to the level of the horizon. She had pain with internal and external rotation. She had positive impingement sign and pain with resisted muscle strength testing and supraspinatus testing. She was diagnosed with a history of left shoulder rotator cuff tendinitis and bursitis with persistent pain. She declined a cortisone injection, stating that it did not provide much pain relief in the past. She was prescribed Zanaflex, Lidoderm patches, and a refill of Vicodin. Ultimately, Claimant will require operative intervention. However, due to medical issues she will have to be cleared for surgery by her treating physician.

On June 29, 2012, Claimant underwent a psychological examination by a physician's assistant. Claimant was noted to have a depressed affect and poor eye contact. Her GAF was 50. The physician's assistant indicated Claimant was markedly limited in understanding and memory, sustained concentration and persistence, social interaction, and adaptation.

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 and mental 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 displaced left clavicle, uncontrolled hypertension, one kidney and chronic asthma.

Listing 1.00 (musculoskeletal system), Listing 3.00 (respiratory system), Listing 4.00 (cardiovascular system), Listing 9.00 (endocrine 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.

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, anxiety, 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 working in a factory on an assembly line. 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 is able to walk short distances and can lift/carry approximately 2 pounds. The objective medical evidence notes limitations in overhead reaching with her left arm. 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 40 years old and was, thus, considered to be a younger individual for MA-P purposes. Claimant has a high school degree and some college. 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 displaced left clavicle, uncontrolled hypertension, one kidney and chronic asthma. The objective medical evidence notes limitations in reaching overhead with her left arm. In light of the foregoing, it is found that Claimant maintains the residual functional capacity for work

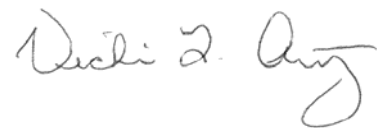
activities on a regular and continuing basis which includes the ability to meet the physical and mental demands required to perform at least sedentary work as defined in 20 CFR 416.967(a). After review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.18, 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, Retro-MA and SDA 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: April 22, 2013

Date Mailed: April 23, 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 error, 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:

