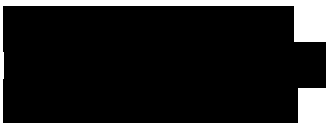


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2013-36259
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: July 25, 2013
County: Ingham

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon 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 July 25, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Lead Worker [REDACTED] [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 September 12, 2012, Claimant filed an application for MA-P, Retro-MA and SDA benefits alleging disability.
- (2) On February 7, 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 based on her non-exertional impairment. SDA was denied due to lack of duration. (Depart Ex. A, pp 1-2).
- (3) On February 14, 2013, the department caseworker sent Claimant notice that her application was denied.
- (4) On March 21, 2013, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On June 7, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform simple and repetitive tasks. (Depart Ex B, pp 1-2).
- (6) Claimant has a history of recurrent urine tract infections, chronic pelvic pain, anxiety, depression and obsessive compulsive disorder.
- (7) Claimant is a 31 year old woman whose birthday is [REDACTED] Claimant is 5'6" tall and weighs 220 lbs. Claimant completed a high school equivalent education and some college.
- (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).

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).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1). The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

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 2005. 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 recurrent urine tract infections, chronic pelvic pain, anxiety, depression and obsessive compulsive disorder.

On January 2, 2012, Claimant presented to the emergency department complaining of abdominal and pelvic pain. Claimant was alert and oriented to person, place and time. She was in no acute distress. The examining physician noted that Claimant had recently been seen in the emergency department on December 5, 9, 13, 14, 21, 25, 28 and 31st of 2011 for the same symptoms. It was noted Claimant smokes less than a pack per day and has good social support. She had tenderness in the suprapubic area and lower abdomen. There was no guarding, rebound tenderness or Murphy's or obturator sign present. The transvaginal ultrasound was normal. Claimant was diagnosed with an acute pelvic inflammatory disease and prescribed Cipro and discharged.

On January 9, 2012, Claimant presented to the emergency department with bladder spasms. No impairments were noted during the functional assessment. The medical records indicate that Claimant asked the attending nurse to talk with the physician regarding pain medication. Claimant was administered Toradol. Ativan could not be given because Claimant was driving. She was prescribed Ativan to take when she got home. She was discharged in stable condition. Claimant reported her pain level at discharge was 10/10 and she wanted to speak to someone to complain.

On January 10, 2012, Claimant presented to the emergency department with sharp pelvic pain radiating down bilateral legs. It was noted that Claimant was given Cipro and Levsin during her last ER visit but she lost the prescription and did not take the medication as directed. Claimant stated the only thing that works for her is Vicodin. Claimant was alert and oriented to person, time, and place. She was anxious and in moderate distress. Her mood and affect were normal. She had moderate tenderness in the right lower quadrant and lower abdomen with no guarding. Lab results showed no significant pathogens. Claimant repeated her requests for narcotic pain medication and became upset and agitated, refusing to leave the emergency department after being discharged because no narcotics were prescribed. It was noted that she was offered multiple medications for her condition, Levsin, Pyridium, Toradol, Motrin and Ultram. She refused all medications stating that nothing works but Vicodin. She was discharged in stable condition.

On June 23, 2012, Claimant presented to the emergency department with the flu and body aches. She was in no acute distress. She was oriented to name, location, time and event. She appeared to be in pain. Claimant left the emergency department prior to being treated. She stated she was leaving for personal reasons and the long wait time.

On June 27, 2012, Claimant presented to the emergency department with abdominal pain. She was oriented to person, place and time and appeared to be in no acute distress. She had tenderness in the suprapubic area. She was diagnosed with chronic suprapubic abdominal pain of unknown cause and discharged.

On July 22, 2012, Claimant presented to the emergency department with pelvic pain. She was alert and in no acute distress. She reported smoking a pack a day. She answered "no" to the question of "have you recently felt down, depressed, or hopeless," and "no" to all following mental status questions. Claimant was administered Zofran and Morphine and discharged ambulatory.

On July 23, 2012, Claimant presented to the emergency department with pelvic pain. Claimant left the emergency department before registration and triage. She was unaccompanied. She appeared alert, oriented x4, coherent and in no acute distress. She stated she was leaving due to the long waiting time.

On December 10, 2012, Claimant was referred for a psychological evaluation by the department. The examining psychologist opined that the results of the evaluation, to include the results of the psychological instruments and Claimant's presentation throughout the evaluation, indicate that she has a long history of psychological distress characterized by Obsessive Compulsive Disorder, Generalized Anxiety Disorder and Major Depressive Disorder. Claimant stated she has received treatment on and off since she was 16. In 2010, she reported she spent one month at the [REDACTED] because of a severe psychiatric crisis. At the time of this evaluation, Claimant indicated she has multiple medical problems that leave her in severe pain and she has significantly reduced physical capabilities as a result. The psychologist opined that Claimant exhibits mildly limited capabilities to understand, retain, and follow simple instructions and to perform and complete simple tasks. She appears to have severely impaired capabilities to interact appropriately and effectively with co-workers and supervisors, and to adapt to changes in the work setting. It is suspected that her severe psychological condition would result in severely impaired capacity to do work-related activities. Diagnoses: Axis I: Obsessive Compulsive Disorder, severe; Generalized Anxiety Disorder, with Social Anxiety; Major Depressive Disorder, recurrent, severe without psychotic features; Axis II: Claimant reported that since childhood she has had chronic pelvic pain which can be debilitating at times. She stated she also has GERD, asthma and low thyroid; Axis IV: Claimant exhibited severe psychosocial stressors associated with severe financial problems, a severe psychiatric condition, a very limited primary support system, social and interpersonal isolations, medical problems and chronic pain, and reduced functional capabilities; Axis V: Current GAF=49. Prognosis is poor as Claimant is in need of ongoing intensive psychological treatment.

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 recurrent urine tract infections, chronic pelvic pain, anxiety, depression and obsessive compulsive disorder.

Listing 3.00 (respiratory system), Listing 5.00 (digestive system), Listing 6.00 (genitourinary impairments), 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.

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 31 years old and was, thus, considered to be a younger individual for MA-P purposes. Claimant has a high school equivalent education 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 recurrent urine tract infections, chronic pelvic pain, anxiety, depression and obsessive compulsive disorder.

The objective medical evidence notes no physical limitations. The one psychological evaluation completed by a psychologist the department referred Claimant to opined that Claimant is not capable of working with others and has a poor prognosis. The psychologist based his opinion on her self-report as there were no records available to review at the time of evaluation. However, as documented by the multitude of medical records from the emergency department, Claimant is always oriented person, place and time and there is no mention of her depression or obsessive compulsive disorder.

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 light work as defined in 20 CFR 416.967(b). After review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 202.20, it is found that Claimant is not disabled for purposes of the MA-P program at Step 5.

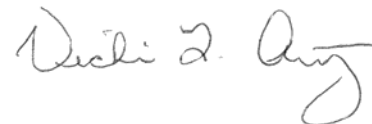
The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p 1. Because Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that Claimant is unable to work for a period exceeding 90 days, Claimant does not meet the disability criteria for State Disability Assistance benefits.

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: August 12, 2013

Date Mailed: August 13, 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:

