

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201366024
Issue No.: 2009, 4009
Case No.: [REDACTED]
Hearing Date: January 16, 2014
County: Crawford County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

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 telephone hearing was held on January 16, 2014. Claimant personally appeared and provided testimony. Claimant's witness, [REDACTED] case manager with [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] appeared and provided testimony on Claimant's behalf. The department was represented by [REDACTED] [REDACTED] an assistance payments supervisor, and [REDACTED] [REDACTED] an eligibility specialist, both with the department's Crawford County office.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA-P) and State Disability Assistance (SDA) programs?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On July 20, 2012, Claimant submitted an application for public assistance seeking MA-P benefits, retroactive MA-P benefits, and SDA benefits.
2. On May 11, 2013, the Medical Review Team (MRT) found Claimant not disabled. (Exhibit A, pp. 26-27)
3. The Department notified Claimant of the MRT determination.

4. On October 11, 2013, the Department received Claimant's timely written request for hearing.
5. On October 12, 2013, the State Hearing Review Team (SHRT) found Claimant not disabled. (Exhibit B, pp. 1-2)
6. Claimant alleged physical disabling impairments due to degenerative disc disease and asthma.
7. Claimant alleged mental disabling impairments due to attention deficit hyperactivity disorder, bipolar disorder, anxiety, panic, and agoraphobia.
8. At the time of hearing, Claimant was 42 years old with a [REDACTED] birth date; was 5'4" in height; and weighed 112 pounds.
9. Claimant is a college graduate with a bachelor's degree in accounting and with an employment history as an accounts payable clerk and a junior accountant.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Bridges Reference Tables (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 416.913. 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 (i.e. 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 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 three to step four. 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 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 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).

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). An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i). Substantial gainful activity means

work that involves doing significant and productive physical or mental duties and is done (or intended) for pay or profit. 20 CFR 416.910(a)(b). Substantial gainful activity is work activity that is both substantial and gainful. 20 CFR 416.972. Work may be substantial even if it is done on a part-time basis or if an individual does less, with less responsibility, and gets paid less than prior employment. 20 CFR 416.972(a). Gainful work activity is work activity that is done for pay or profit. 20 CFR 416.972(b).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Claimant is not working therefore is not involved in substantial gainful activity. Accordingly, Claimant is not ineligible for disability benefits under Step 1.

The severity of Claimant's alleged impairment(s) is considered under Step 2. Claimant 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

201366024/SDS

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 degenerative disc disease, asthma, attention deficit hyperactivity disorder, bipolar disorder, anxiety, panic, and agoraphobia.

On February 7, 2012, an MRI of the lumbar spine without contrast showed at L5-S1 level a left paracentral disc extrusion extending caudal to the disc space contributing to focal severe left lateral recess compromise, unchanged from 2008; disc degeneration and central annular fissuring at the L4-L5 level with a mild central disc protusion contributing to minimal lateral recess narrowing, no appreciable change since 12/20/08; and L3-L4 level with central annular fissuring and a central disc protusion with mild lateral recess narrowing, which has progressed since 2008 study.

On August 9, 2012, Claimant was seen with complaints of moderate to severe pain in her neck and back with current pain medications providing only partial relief, and with request that A Medical Examination Report disability form be completed. At that time, Claimant was assessed with chronic neck and back pain with extensive degenerative disc disease, worse in the lumbar spine and an MRI and x-rays of thoracic spine were ordered. Examinations showed normal findings for all body systems except musculoskeletal (tenderness throughout back and spine noted) and mental (anxious, easily distracted). Claimant was continued on current pain medications and home exercise program and recommended to consider referral for therapeutic injections or nerve blocks with a pain clinic.

On February 21, 2013, an independent medical evaluation showed that Claimant has full range of motion of the upper extremities, normal spinal curvature, and ability to bend forward to almost 90 degrees despite problems with degenerative disc disease. Claimant had no restriction to back bending, rotation and side bending were normal, lower extremities were normally developed, and she walked with a normal gait without any appliance. The evaluating D.O. concluded that Claimant's low back does not seem to be a problem and, on observation of ambulation, she is not impeded in any manner.

Claimant began mental health treatment with [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] in December 2008, at which time an initial intake assessment included bipolar disorder, ADHD, generalized anxiety, and panic attacks.

Claimant attended individual therapy sessions at [REDACTED] [REDACTED] on May 1, 2012, June 5, 2012, July 5, 2012, July 25, 2012, and August 10, 2012 – at the last visit, Claimant reported that she was doing ok and was observed with an improved mood and affect. She was easily engaged, her eye contact was good and she was able to verbalize and

201366024/SDS

focus on immediate and future goals and felt she was handling some things better and appeared to be more positive.

On February 21, 2013, Claimant was seen for an independent psychiatric/psychological evaluation, the results of which showed no abnormalities. Claimant met the diagnostic criteria for bipolar II and panic disorder with agoraphobia and her ability to relate and interact with others, including coworkers and supervisors, was impaired and her mental illnesses affected her interpersonal relationships in the workplace. However, her ability to understand, recall, and complete tasks and expectations did not appear to be significantly impaired. Claimant was able to perform simple tasks and should be able to perform familiar routines and tasks and tasks that have multiple steps and increased complexity. But her ability to withstand the normal stressors associated with a workplace setting was very impaired.

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 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 the Claimant's basic work activities. Further, the impairments have lasted, or are expected to last, continuously for a period of twelve months or longer; 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 Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404.

In this case, although the objective medical records establish treatment/diagnoses of degenerative disc disease, asthma, attention deficit hyperactivity disorder, bipolar disorder, anxiety, panic, and agoraphobia, these records do not meet the intent and severity requirements of a listing, or its equivalent. Accordingly, the Claimant cannot be found disabled, or not disabled, at Step 3.

Before considering the fourth step in the sequential analysis, a determination of the individual's residual functional capacity ("RFC") is made. 20 CFR 416.945. An individual's RFC is the most he/she can still do on a sustained basis despite the limitations from the impairment(s). *Id.* The total limiting effects of all the impairments, to include those that are not severe, are considered. 20 CFR 416.945(e).

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 additionally 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, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered non-exertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, there must be a comparison of the individual's residual functional capacity with the demands of past relevant work. *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 function 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 (i.e. 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.*

In this case, the evidence confirms treatment/diagnoses of degenerative disc disease, asthma, attention deficit hyperactivity disorder, bipolar disorder, anxiety, panic, and agoraphobia. Claimant testified that she can drive and walk short distances, such as from the car to the grocery store (however, Claimant drove to the hearing and walked unassisted from her car into the DHS office and hearing room); sit for 60 minutes without moving around; lift/carry 8 pounds; and stand for 10 minutes. Claimant further testified that she is able to cook and prepare own meals, do grocery shopping and housekeeping as well as chores for her mother. Claimant also reported that she has difficulty organizing her thoughts and that she is easily overwhelmed with panic and anxiety when having to accomplish several tasks. However, the objective medical findings do not support the extreme limitations suggested and call into question Claimant's credibility. It is therefore found that, at this time, Claimant is able to maintain the physical and mental demands necessary to perform light, exertional, simple and repetitive work, as defined by 20 CFR 416.967(a).

The fourth step in analyzing a disability claim requires an assessment of Claimant'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 is not considered. 20 CFR 416.960(b)(3).

Claimant's prior work history consists of employment as an accountant. In consideration of Claimant's testimony and referring to the Occupational Code, the Claimant's prior employment as an accounting clerk was classified as skilled sedentary. If the impairment or combination of impairments does not limit 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 light of the entire record, to include the Claimant's testimony and RFC (see above), it is found that Claimant is unable to perform past relevant work.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience would be considered to determine whether an adjustment to other work could be made. 20 CFR 416.920(4)(v). At the time of hearing, Claimant was 42 years old thus considered a younger individual for MA-P purposes. Claimant is a college graduate. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human*

201366024/SDS

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, based on the objective findings, it is found that the Claimant maintains the residual functional capacity for work activities on a regular and continuing basis to meet the physical and mental demands required to perform at least unskilled sedentary work as defined in 20 CFR 416.967(a). After review of the entire record finding no contradiction with any non-exertional impairment, and in consideration of Claimant's age, education, work experience, RFC, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rules 202.20 through 202.22, Claimant would be found not disabled at Step 5 as well.

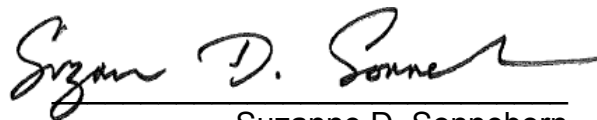
In this case, Claimant is found **not disabled** for purposes of the MA-P program; therefore, she is found **not disabled** for purposes of SDA benefit program.

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 and SDA benefit programs.

Accordingly, It is ORDERED:

The Department's determination is **AFFIRMED**.



Suzanne D. Sonneborn
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: January 31, 2014

Date Mailed: February 3, 2014

201366024/SDS

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.

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

SDS/hj

cc:

