

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-15164
Issue No(s): 2009
Case No.: [REDACTED]
Hearing Date: April 2, 2014
County: Gladwin County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 April 2, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) benefit program?

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 January 25, 2012, Claimant applied for Medicaid reporting that she was unable to work due to health problems.
2. Claimant was approved for Medicaid based on being a caretaker of a child under age 18 (MA-LIF).
3. When Claimant's son turned 18, Medicaid based on disability (MA-P) was considered.
4. On October 31, 2013, the Medical Review Team (MRT) found Claimant not disabled.
5. On November 8, 2013, the Department notified Claimant of the MRT determination and the MA-LIF was closed.

6. On November 20, 2013, the Department received Claimant's timely written request for hearing.
7. On February 16, 2014, the State Hearing Review Team (SHRT) found Claimant not disabled.
8. Claimant alleged multiple physical disabling impairments including: spinal stenosis, fibromyalgia, possible carpal tunnel syndrome, migraines, history of rotator cuff injury, and thyroid condition.
9. Claimant alleged mental disabling impairments due to anxiety and depression.
10. At the time of hearing, Claimant was 48 years old with an [REDACTED] birth date; was 5' 5 and 1/2" in height; and weighed 146 pounds.
11. Claimant completed the 10th grade and has an employment history of delivering newspapers and working as a CNA.
12. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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).

As outlined above, the first step looks at the individual's current work activity. Claimant credibly testified she is working, specifically cleaning at the apartment complex where she lives. Claimant works 16-20 hours per month but can complete the work as she wants to. Claimant earns \$200 per month and has been doing this work for about the past two years. Claimant's current work is not sufficient to be considered substantial gainful activity. Therefore is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The 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 416.920(a)(4)(ii); 20 CFR 416.920(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 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(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 multiple impairments, including: spinal stenosis, fibromyalgia, possible carpal tunnel syndrome, migraines, history of rotator cuff injury, thyroid condition, anxiety and depression.

On September 25, 2013 Claimant attended a consultative mental status examination. The report indicated a diagnosis of panic disorder with agoraphobia, and prognosis of fair noting that the prognosis would improve if Claimant received adequate mental health treatment. It was noted: Claimant appears to have significant panic attacks; generally avoids public places where escape may be difficult and isolates self; her anxiety is somewhat improved with medication; it appears any difficulty Claimant would have with sustaining consistent work is based on health issues; with proper mental

health treatment the Claimant's panic should not prevent her from sustaining work and in fact she has been working two days per month.

On September 24, 2013, Claimant's Internal Medicine doctor completed a DHS-49 Medical Examination Report. Current diagnoses of anxiety disorder and fibromyalgia were listed. Abnormal exam findings included anxious, decreased shoulder range of motion bilaterally and trigger points of fibromyalgia. Physical limitations including lifting up to 10 pounds frequently, 25 pounds occasionally, standing or walking at least 2 hours in an 8 hour work day, sitting less than 6 hours in an 8 hour work day, and unable to use hands/arms for reaching and pushing/pulling. Mental limitations were indicated with memory and social interaction.

A May 28, 2013 Community Mental Health (CMH) closing record lists a diagnosis of Major Depressive Disorder, recurrent moderate. Claimant had been in treatment since November 22, 2011. It was noted the Claimant is able to reduce anxiety and depression with therapy, progress was made but Claimant is not consistent with attending appointments.

The majority of the medical records are from several years earlier. A July 16, 2011 letter from the orthopedic doctor documented right shoulder partial vs complete rotator cuff tear, impingement syndrome and neck pain. An October 5, 2011 letter from a neurosurgeon noted the significant rotator cuff problem per the orthopedic doctor and that Claimant was set up for physical therapy next week. The neurosurgeon suspected most of the symptoms would subside it would not be necessary to do anything about the C5-6 and C6-7 spondylotic changes. A May 11, 2011 EMG/Nerve Conduction Study suggested subacute right more than left C6-7 radiculopathy with active denervation. On May 16, 2012, Claimant was seen at an Emergency Room for acute sinusitis and acute bronchitis. Records from an ENT doctor showed treatment for thyroid disorder in May 2011 and July 2012. The reports note multiple thyroid masses, none greater than 10 mm in size and thyroid functioning appropriately. Records also document that Claimant was treated for hydronephrosis and kidney stones from 2008 through 2011. In August 2010 Claimant was seen in the Emergency room for chest wall pain and right pulmonary nodule.

The earlier imaging reports included several CT and MRI scans. A March 1, 2011 CT Cervical Spine documented: mild multilevel degenerative changes with spurring at the C2-3 through C5-6 levels, findings most pronounced on the left at the C5-6 level associated with moderate left 5-6 foramen narrowing; associated broadly bulging disk at the C5-6 level more pronounced on the left and mild central bulging at the C4-5 level without significant central canal narrowing. A March 16, 2011 MRI of the Cervical Spine documented degenerative changes that are most notable at C5-6 for considerable left foraminal narrowing and thyroid lesions. An April 19, 2011 MRI of the right shoulder documented: focal severe rotator cuff tendinopathy/partial tear of the anterolateral rotator cuff with small adjacent complete or near complete tear; a downward sloping acromion; and some irregularity of the superior aspect of the labrum, a small labral tear could not be excluded.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). It is noted that there is limited recent objective medical evidence.

As summarized above, Claimant has presented some medical evidence establishing that she does have some physical limitations on the ability to perform basic work activities. The medical evidence has established that the 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 continuously for twelve months; therefore, the 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 Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms recent treatment/diagnosis of panic disorder with agoraphobia, major depressive disorder, recurrent moderate, anxiety disorder and fibromyalgia. Older imaging reports document rotator cuff injury and cervical spine degenerative changes.

The medical records were insufficient to meet or equal listings, including 1.02 major dysfunction of a joint(s), 1.04 disorders of the spine, 9.00B2 thyroid gland disorder, 11.14 peripheral neuropathies, 12.04 affective disorders, or 12.06 anxiety-related disorders.

Ultimately, the objective medical records establish some physical and mental impairments; however, the evidence does not meeting the intent and severity requirements of a listing, or its equivalent. Accordingly, the Claimant cannot be found disabled, or not disabled, at Step 3; therefore, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

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 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 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 to 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 recent treatment/diagnosis of panic disorder with agoraphobia, major depressive disorder, recurrent moderate, anxiety disorder and fibromyalgia. Older imaging reports document rotator cuff injury and cervical spine degenerative changes. However, the objective medical evidence does not support the severity of the limitations Claimant described. For example, Claimant testified she would have difficulty lifting and carrying 10 pounds but the September 24, 2013 DHS-49 Medical Examination Report from Claimant's Internal Medicine doctor indicates an ability to lift up to 10 pounds frequently and 25 pounds occasionally. The September 25, 2013, consultative mental status examination stated it appeared any difficulty Claimant would have with sustaining consistent work is based on health issues; with proper mental health treatment the Claimant's panic should not prevent her from sustaining work and in fact she has been working two days per month. The CMH closure report indicated Claimant is able to reduce anxiety and depression with therapy

and progress was made, but Claimant is not consistent with attending appointments. Claimant has been able to work 16-20 hours per month for almost two years cleaning the apartment complex where she lives. Claimant's testimony regarding the severity of limitations from her impairments cannot be found fully credible. After review of the entire record and considering the Claimant's testimony, it is found, at this point, that Claimant maintains the residual functional capacity to perform at least light work as defined by 20 CFR 416.967(b) with limitations including limited reaching and pushing/pulling with hands/arms.

The fourth step in analyzing a disability claim requires an assessment of the 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 has a prior full time employment history of delivering newspapers and working as a CNA. The Dictionary of Occupational Titles categorizes newspaper carrier as light work. However, Claimant described her past newspaper delivery work as involving lifting bundles of papers that are 15 pounds. Frequent lifting of 15 pound bundles would be a bit beyond light work. Claimant confirmed that work as a CNA often involves lifting significant weight and is categorized as medium work in the Dictionary of Occupational Titles. As noted above, the objective evidence does not support the severity of the limitations Claimant described, but does support a RFC of light work with limited reaching and pushing/pulling with hands/arms. In light of the entire record and Claimant's RFC, it is found that Claimant is not able to perform past relevant work. Accordingly, Claimant cannot be found disabled, or not disabled, at Step 4.

In Step 5, an assessment of Claimant'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 49 years old and, thus, considered to be a younger individual for MA-P purposes. Claimant has a high school diploma. Claimant has an employment history of factory work. 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 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, the evidence confirms recent treatment/diagnosis of panic disorder with agoraphobia, major depressive disorder, recurrent moderate, anxiety disorder and fibromyalgia. Older imaging reports document rotator cuff injury and cervical spine degenerative changes. As noted above, the objective evidence does not support the severity of the limitations Claimant described, but does support a RFC of light work with limited reaching and pushing/pulling with hands/arms. Further, any skills from the past work as a CNA would not be transferable.

After review of the entire record, and in consideration of the Claimant's age, education, work experience, RFC, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 202.18, Claimant is found not disabled at Step 5.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant not disabled for purposes of the MA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is **AFFIRMED**



Colleen Lack
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 12, 2014

Date Mailed: May 12, 2014

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides or has its principal place of business in the State, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

201415164/CL

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

CL/hj

cc:

