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

IN THE MATTER OF:

[redacted]

Reg. No.: 15-009360
Issue No.: 4009
Case No.: [redacted]
Hearing Date: July 20, 2015
County: Hillsdale

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 July 20, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Health and Human Services (Department) included [redacted], Family Independence Manager.

ISSUE

Did the Department properly determine that Claimant was not disabled for purposes of the State Disability Assistance (SDA) 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 November 12, 2014, Claimant submitted an application for public assistance seeking SDA benefits.

2. On January 16, 2015, the Medical Review Team (MRT) found Claimant not disabled (Exhibit A, pp. 8-10).

3. On April 16, 2015, the Department sent Claimant a Notice of Case Action denying the application based on MRT's finding of no disability (Exhibit A, pp. 5-7).

4. On June 4, 2015, the Department received Claimant's timely written request for hearing.

5. Claimant alleged disabling impairments due to shortness of breath, chronic obstructive pulmonary disease (COPD), migraines, memory loss, bipolar disorder, and depression.

6. On the date of the hearing, Claimant was [redacted] years old with a [redacted] birth date; she is [redacted]" in height and weighs about [redacted] pounds.

7. Claimant graduated from high school and took some college classes.

8. Claimant has an employment history of work as a file clerk, a factory inspection worker, and convenience store cashier.

9. Claimant's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

CONCLUSIONS OF LAW

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

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180.

A disabled person is eligible for SDA. BEM 261 (July 2014), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

To determine whether an individual is disabled for SSI purposes, the trier of fact must apply a five-step sequential evaluation process and consider the following:

> (1) whether the individual is engaged in substantial gainful activity (SGA);
> (2) whether the individual's impairment is severe;
> (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404;
> (4) whether the individual has the residual functional capacity to perform past relevant work; and

(5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (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).

In general, the individual has the responsibility to establish a disability 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, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 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, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

As outlined above, the first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Claimant has not engaged in SGA activity during the period for which assistance might be available. Therefore, Claimant is not ineligible under Step 1 and the analysis continues to Step 2.

Step Two

Under Step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

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 mean the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the *de minimus* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen,* 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services,* 773 F2d 85, 90 n.1 (CA 6, 1985).

In the present case, Claimant alleges disabling impairment due to shortness of breath, COPD, migraines, memory loss, bipolar disorder, and depression. The medical evidence presented at the hearing was reviewed and is summarized below.

A September 2014 left knee injury was examined at the hospital, but Claimant was discharged in improved condition (Exhibit A, pp. 114-121). On November 5, 2014, she was treated at the hospital for chronic asthmatic bronchitis and COPD with acute exacerbation and released (Exhibit A, pp. 124-131; Exhibit 1, pp. 82-89).

In an initial April 11, 2013, psychiatric evaluation, Claimant was diagnosed with depressive disorder, borderline personality disorder and dependent personality disorder and was assigned a global assessment of functioning score of 62 (Exhibit 1, pp. 15-20). In the May 15, 2015, medication review, the doctor modified the diagnosis to major depressive disorder, recurrent; generalized anxiety disorder; and dependent personality disorder and decreased the GAF score to 50 (Exhibit 1, pp. 32-36, 151-155).

Claimant's file includes medication reviews from her psychiatrist for May 2013 to May 2015 showing ongoing complaints of memory loss and sleep issues (Exhibit A, pp. 23-45, 60-69, 143-240; Exhibit 1, pp. 9-13, 32-41, 44-48, 54-58, 65-74151-155,). In the May 15, 2015 medication review, the last review provided, the doctor noted that Claimant had good insight and judgment and that she reported feeling better than she had in years (Exhibit 1, pp. 32-36, 151-155). The file also includes progress notes showing Claimant's participation in therapy at [redacted] and [redacted] beginning November 2014 (Exhibit A, pp. 84-107).

In May 12, 2014, Claimant was examined by a neurologist who concluded that she suffered from chronic migraine headaches. He noted that, because she used analgesics on a daily basis to treat her headaches, her condition was complicated by

analgesic rebound headaches; he recommended that daily analgesic use be reduced. In a November 20, 2014 client note, the neurologist found that Claimant suffered from chronic headaches, some due to medication, others to anxiety. He described the headaches as dull and continuous, with Claimant reporting that they occurred 80% of days. He noted that Claimant did not sleep well and that could be contributing factor. Because Claimant indicated that she had been dealing with the headaches for 20 years, he did not believe that there were any dire neurologic consequences (Exhibit A, pp. 51-59, 108-112, Exhibit 1, pp. 59-60). A November 29, 2014, MRI of Claimant's brain showed (i) no acute intracranial infarct, hemorrhage or mass; (ii) few subtle small foci of signal abnormality in periventricular white matter in nonspecific in regards to etiology but likely seen in patients with migraine headaches and mild chronic microvascular ischemic disease; and (iii) midline nasopharyngeal cyst, increased in size from previous study (Exhibit A, pp. 113, 135, Exhibit 1, p. 93). The neurologist concluded that the cyst was not a source of Claimant's headaches (Exhibit 1, p. 6).

Claimant visited the neurologist on January 12, 2015; June 9, 2015; and July 8, 2015 (Exhibit 1, pp. 2-7, 27-30, 49-50). In January 12, 2015, clinic notes, the neurologist advised Claimant that her complaints concerning tingling in toes and fingers was a known side effect of topiramate, a drug she was taking at the time, especially at her fairly high dosage of 100 mg twice daily (Exhibit 1, pp. 6-7). In July 8, 2015, notes, the neurologist concluded that Claimant had a common migraine cephalgia with a component of tension headache. He noted that Claimant's social situation was the overwhelming problem that prompted the tension headaches and additional migraines and expressed concerns that Claimant seeking to base a disability claim on her headaches was a bad prognostic sign (Exhibit 1, pp. 27-28).

On February 7, 2015; March 28, 2015; May 31, 2015; and June 1, 2015, Claimant went to the emergency department complaining of migraines. She was treated and released the same day (Exhibit 1, pp. 95-108, 115-120). On July 15, 2015, she was treated at the emergency department for a migraine and a left ankle injury (Exhibit 1, pp 145-150). On April 18, 2015, she was treated at the emergency department for back pain; a chest x-ray showed mild degenerative changes but no visible acute bony abnormalities (Exhibit a, pp. 109-114). On June 22, 2015, she was treated at the emergency department for a minor head injury and single right rib fracture following an altercation with her daughter-in-law and was discharged in good and stable condition (Exhibit 1, pp. 128-139). It was noted that she suffered a concussion with possible loss of consciousness (Exhibit 1, pp. 140-144).

A March 31, 2015, exam by a vascular surgeon in response to Claimant's complaints of pain and discomfort of the lower extremities, with coldness and numbness everywhere and leg cramping, indicated that an ultrasound of Claimant's lower extremity arteries revealed normal ABI (ankle brachial index) bilaterally and ultrasound of her lower extremity veins revealed no venous reflux in either lower extremity (Exhibit 1, pp. 42-43, 51-52).

In consideration of the de minimus standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Claimant suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 90 days. Therefore, Claimant has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

The medical evidence presented does **not** show that Claimant's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Listings 3.02 (chronic pulmonary insufficiency), 11.00 (neurological), 12.04 (affective disorders), 12.06 (anxiety-related disorders), and 12.08 (personality disorders) were considered. Because Claimant's impairments are insufficient to meet, or to equal, the severity of a listing, Claimant is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Step 4, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. Impairments, and any related symptoms, may cause physical and mental limitations that affect what a person can do in a work setting. 20 CFR 416.945(a)(1). RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s) and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4). The RFC takes into consideration the total limiting effects of all impairments, including those that are not severe. 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants 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).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If the limitations and restrictions imposed by the individual's impairment(s) and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). To determine the exertional requirements, or physical demands, of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a).

> Sedentary work.
> Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 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. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.
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> Light work.
> Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the 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. 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. If someone can do light work, . . . he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.
>
> Medium work.
> Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, . . . he or she can also do sedentary and light work.
>
> Heavy work.
> Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, . . . he or she can also do medium, light, and sedentary work.
>
> Very heavy work.
> Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, . . . he or she can also do heavy, medium, light, and sedentary work. 20 CFR 416.967.

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning 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., unable to 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).

In this case, Claimant alleges both exertional and nonexertional limitations due to her medical condition. Claimant testified that her migraines, which occurred once a week, resulted in vision problems and vomiting and could last up to three weeks; she cried daily; she had problems with her memory; she suffered from panic attacks a few times a month, each lasting a few seconds; and she used her inhaler daily. She lived alone but had problems caring for herself and doing chores because she was tired, depressed, and would forget. She did not like to go to public places. She testified that she did not have any walking restrictions, weight restrictions (other than being proportionate to her small stature), or limitations to her ability to grip or grasp. She testified that her legs went numb if she sat too long and she could stand as long as she could sit if she got dizzy.

The medical record establishes that Claimant was diagnosed with COPD and prescribed treatment for the condition. However, other than one incident on November 5, 2014 where she was treated for chronic asthmatic bronchitis and COPD with acute exacerbation, there was no evidence that Claimant's condition was not being adequately controlled with medication. Claimant's own testimony does not reflect any substantial limitations on her exertional ability to perform basic work activities. Based on Claimant's testimony that she did not have lifting restrictions other than those imposed by her size (she is [redacted]" and weighs [redacted]) and she could stand as long as she had the opportunity to sit, it is found that Claimant maintains the exertional RFC to perform light work as defined in 20 CFR 416.967(b).

Claimant's record supports her testimony that she suffered from long-standing migraines and had impairments due to her mental condition. Claimant visited the emergency department almost once each month between February 2015 and July 2015 complaining of migraines. Claimant's neurologist identified the headaches as chronic, some due to medication, others to her anxiety, but he did not believe there were any dire neurological consequences, as supported by the November 29, 2014 MRI of Claimant's brain. He noted that her headaches were affected by her social situation and that her concerns of memory loss could be related to her sleep issues. Of the five hospital records for the migraines, only one was characterized as severe. None resulted in admission. The medical record also shows that Claimant was diagnosed with major depressive disorder, recurrent; generalized anxiety disorder; and dependent personality disorder, and was receiving ongoing psychiatric treatment. While the record supports Claimant's testimony that her headaches and mental conditions affected her ability to engage in daily activities, it is found based on the record presented that Claimant has a nonexertional RFC resulting in mild to moderate limitations on her ability to perform work activities on a sustained basis.

Claimant's RFC is considered at both steps four and five. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Claimant's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id*.; 20 CFR 416.960(b)(3); 20 CFR 416.920. 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).

As determined in the RFC analysis above, Claimant is limited to light work activities and has mild to moderate limitations in her mental capacity to perform basic work activities. Claimant's work history in the 15 years prior to the application consists of work as a file clerk (light, unskilled), a factory inspection worker (light, unskilled), and convenience store cashier (light, unskilled). Claimant maintains the exertional RFC to perform prior work. Her nonexertional RFC would not preclude her from performing prior work. Accordingly, Claimant is found not disabled at Step 4 and the assessment ends.

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 SDA benefit program.

DECISION AND ORDER

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

Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **7/29/2015**

Date Mailed: **7/29/2015**

ACE / tlf

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, 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.

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 48909-8139

cc: [redacted]