

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2010-14597
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: February 24, 2010
Wayne County DHS (82)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a hearing was held in Redford, Michigan on Wednesday, February 24, 2010. The Claimant appeared and testified. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED] appeared on behalf of the Department.

During the hearing, the Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new records were received, reviewed, and entered as Exhibits 6 and 7. This matter is now before the undersigned for a final decision.

ISSUE

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

FINDINGS OF FACT

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

1. The Claimant submitted an application for public assistance seeking MA-P benefits on October 2, 2009.
2. On October 8, 2009, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 3, 4)

3. On October 19, 2009, the Department sent an Eligibility Notice to the Claimant informing him that he was found not disabled. (Exhibit 1, pp. 1, 2)
4. On December 4, 2009, the Department received the Claimant's written request for hearing. (Exhibit 3)
5. On January 13, 2010, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 5)
6. The Claimant alleged physical disabling impairments due to arthritis, hip/knee pain, chronic obstructive pulmonary disease ("COPD"), cardiomyopathy, and congestive heart failure, kidney stones, and seizure disorder.
7. The Claimant alleged mental disabling impairments due to depression, anxiety, and bipolar disorder.
8. At the time of hearing, the Claimant was 55 years old with a [REDACTED] birth date; was 6' in height; and weighed 190 pounds.
9. The Claimant has the equivalent of a high school education with an employment history as a general laborer, resident manager, and carpet installer.
10. The Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

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 of Human Services ("DHS"), formerly known as the Family Independence Agency, 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 Bridges Reference Manual ("BRM").

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 (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 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 addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a) First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1) When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2) Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2) Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1) In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3) The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4) A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d) If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR 416.920a(d)(2) If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in 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 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, the Claimant alleges disability due to arthritis, hip/knee pain, COPD, cardiomyopathy, congestive heart failure, kidney stones, urethral stenting, seizure disorder, depression, anxiety, and bipolar disorder.

On [REDACTED], the Claimant presented to the hospital seeking help for his alcohol abuse. Chest x-rays revealed basilar prominence and mild right basilar atelectasis. X-rays of the lumbar spine found diffuse arthritis without evidence of acute fracture. Sonographic evaluation revealed an enlarged liver suggesting steatosis, gallbladder sludge, and shadowing of the left kidney suggesting renal calculi. The discharge summary was not submitted.

On [REDACTED], the Claimant was admitted to the hospital for his intoxication electrolyte imbalance. Cardiac catheterization was performed without complication. The Claimant was discharged the following day with diagnoses of alcohol induced cardiomyopathy, exacerbation of congestive heart failure secondary to systolic dysfunction and chronic alcohol abuse, COPD, pneumonia, major depression secondary to alcoholism, gastritis, hypertension, fluid/electrolyte abnormalities, GERD,

anemia, thrombocytopenia secondary to alcohol abuse, recurrent falls, and alcohol induced hepatitis.

On [REDACTED], the Claimant was admitted to the hospital with complaints of chest pain. The Claimant was discharged on [REDACTED] [REDACTED] with the diagnoses of atypical chest pain, history of cardiomyopathy, hypertension, gastritis, and alcohol abuse, COPD, liver cirrhosis, and depression.

On [REDACTED], the Claimant presented to the emergency room with complaints of chest pain. The CT scan revealed a possible small reversible defect in the anterolateral segment with minimal diminished activity, dilated cavity, hypokinesis of the septum, and an ejection fraction of 56%. The discharge summary was not submitted so it is not clear how long the Claimant remained in the hospital.

On [REDACTED], the Claimant presented to the hospital with complaints of chest pain. The Claimant was admitted and treated for congestive heart failure and alcoholic cardiomyopathy. The discharge summary was not presented.

On [REDACTED], the Claimant presented to the hospital with complaints of left lower quadrant pain. The admitting diagnoses were left lower quadrant abdominal pain, colitis versus diverticulitis, acute nephrolithiasis, left renal hydronephrosis, hematuria, and acute leukocytosis. On [REDACTED] [REDACTED], the Claimant underwent urethral stent placement without complication. The discharge summary was not submitted so it is not clear when the Claimant was discharged and what his discharge diagnoses were.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were heart disease, hypertension, and arthritis of the spine. The physical examination revealed anemia, cirrhosis of the liver, shortness of breath, COPD, congestive heart failure, tender liver, enlarged spleen, myopathy, and major depression. The Claimant condition was deteriorating and he was found unable to lift/carry any weight and was unable to operate foot/leg controls. Mentally, the Claimant was limited in following simple instructions.

On [REDACTED], the Claimant attended a consultative psychiatric evaluation. The diagnoses were alcohol induced mood and amnestic disorders noting a long history of alcohol abuse and addiction and personality disorder (not otherwise specified). The Global Assessment Functioning ("GAF") was 45 to 50 and his prognosis was poor.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were COPD, diverticulitis, hypertension, congestive heart failure, and arthritis. The Claimant's condition was deteriorating and he was found unable to lift/carry any weight; stand and/or walk less than 2 hours in an 8-hour workday; and able to perform repetitive actions with his upper extremities with the

exception of pushing/pulling. The Claimant was unable to operate foot/leg controls. Mental limitations were in sustained concentration, and social interaction.

On [REDACTED], a MRI of the right knee revealed bilateral meniscal tears, mild tri-compartmental degenerative disease with articular cartilage loss and thinning, and small popliteal cyst. The MRI of the left knee revealed mild tri-compartmental degenerative disease with associated cartilaginous loss. A CT of the lumbar spine found mild degenerative changes about the L5-S1 intervertebral disc space and mild degenerative changes about the left hip with no acute osseous abnormality.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some medical evidence establishing that he does have some physical limitations on his 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 Claimant alleges disability due to arthritis, hip/knee pain, COPD, cardiomyopathy, congestive heart failure, kidney stones, urethral stenting, seizure disorder, depression, anxiety, and bipolar disorder.

Listing 1.00 (musculoskeletal system), Listing 3.00 (respiratory system), Listing 4.00 (cardiovascular system), Listing 5.00 (digestive system), Listing 6.00 (genitourinary system), Listing 11.00 (neurologic), and Listing 12.00 (mental disorders) were considered in light of the evidence presented. Ultimately, it is found, based on the objective evidence, that the Claimant's impairments do not meet the intent and severity requirement of a listed impairment thus he cannot be found disabled, or not disabled, at Step 3. Accordingly, the 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 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) RFC is assessed based on impairment(s), and any related symptoms, such as pain,

which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967 Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a) Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are 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 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.*

The Claimant's prior work history consists of employment as a general laborer, a resident manager, and carpet installer. In light of the Claimant's testimony and in consideration of the Occupational Code, the Claimant's prior work as a general laborer is considered unskilled, medium work; the resident manager position is classified as semi-skilled, light work; and the carpet installer employment is classified as semi-skilled, medium to heavy work.

The Claimant testified that he is able to walk short distances, can sit and stand for about ½ hour; can lift 20 pounds; and is able to bend but not squat. The objective medical evidence noted the Claimant's condition as deteriorating and found him unable to lift/carry any weight; stand and/or walk less than 2 hours during an 8 hour workday; unable to operate foot/leg controls; and able to perform repetitive actions except for pushing/pulling. 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 consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is not be able to return to past relevant work thus the fifth step in 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, the Claimant was 58 years old thus considered to be of advanced age for MA-P purposes. The Claimant has a high school education with 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 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 order to find transferability of skills to skilled sedentary work for individuals who are of advanced age (55 and over), there

must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry. Individuals of advanced age found to be significantly affected in their ability to adjust to other work. 20 CFR 416.963(e)

In this case, the evidence reveals that the Claimant suffers from arthritis of the spine, congestive heart failure, COPD, cardiomyopathy, liver cirrhosis, GERD, bilateral meniscal tears, degenerative disease, and major depression. In consideration of the foregoing, it is found that the Claimant retains the residual functional capacity for work activities on a regular and continuing to meet at the physical and mental demands required to perform sedentary work as defined in 20 CFR 416.967(a). After review of the entire and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.04 and 201.06, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds the Claimant disabled for purposes of the MA-P benefit program.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the October 2, 2009 application to determine if all other non-medical criteria are met and inform the Claimant and his Authorized Representative of the determination in accordance with department policy.
3. The Department shall supplement for any lost benefits (if any) that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with department policy.
4. The Department shall review the Claimant's continued eligibility in January 2012 in accordance with department policy.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 12/27/2010

2010-14597/CMM

Date Mailed: 12/27/2010

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.

CMM/jlg

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