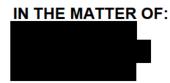
### STATE OF MICHIGAN

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



Reg No.: 2010-46244 Issue No.: 2009, 4031

Case No.:

Hearing Date: January 24, 2011 Macomb County DHS (36)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

# **HEARING DECISION**

This matter is before the undersigned Administ rative 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 Sterling Height s, Michigan on Monday, J anuary 24, 2011. The Claimant appeared, along with and testified. The Cl aimant was represented by appeared on behalf of the Department of Human Services ("Department").

During the hearing, the Claimant waived the time frame for the issuance of this decision in order to allow for the submission of additional medical records. The evidence was received, reviewed, and forwarded to the State Hearing Review Team ("SHRT") for consideration. On December 5, 2011, this office received the SHRT determination which found the Claimant not disabled.

## <u>ISSUE</u>

Whether the Department proper ly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") and St ate Disability Assistance ("SDA") benefit programs?

## FINDINGS OF FACT

The Administrative Law Judge, based on t he 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 and SDA benefits on May 10, 2010.

- 2. On June 10, 2010, the Medical Review Te am ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 70, 71)
- 3. On June 16, 2010, the Department notified the Claimant of the MRT determination. (Exhibit 1, pp. 77 79)
- 4. On August 3, 2010, the Department rece ived the Claimant timely written request for hearing.
- 5. On August 13, 2010 and December 1, 2011, the SHRT found the Claimant not disabled. (Exhibit 2)
- 6. The Claim ant alleged physical disable ing impairments due to a fractured collar bone, back pain, groin pain, v ision loss, chest pain, loss of equilibrium, Hepatitis C, liver disease, closed head injury, and migraine headaches.
- 7. The Claim ant alleged mental disabling impairments due to anxiety and depression.
- 8. At the time of hearing, the Claim ant was years old wit h an birth date; was 5'11" in height; and weighed 250 pounds.
- 9. The Claim ant has a limited education with an employment his tory as a tree cutter.
- 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 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, formerly known as the Family Independence Agency, pursuant to MCL 400.10 *et seq.* and MCL 400.105. Department policies are found in the Bridge's Administrative Manual ("BAM"), the Bridges Elig ibility 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 im pairment which can be expected to result in death or which has lasted or can be expect ed 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, clinica l/laboratory findings, diagnosis/prescri bed treatment, prognosis for recovery and/or medical assessment of ability to do work-related ac tivities o r ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 413 .913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CF R 416.908; 2 0 CFR 4 16.929(a). Similarly, conclusor y 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 cons ider an individual's current work activit y; 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 det ermine whether an individual can perform past relev ant work; and residual functional capacity along with vocational factors (i .e. age, education, and work experienc e) 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 disable ed, or not disabled, at 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 indi vidual'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 f unctional capacity is the most an indiv idual can do d espite the limitations based on all relevant evidence. 20 CF R 945(a)(1). An individual's residua I functional capacity assessment is evaluat ed at both steps four and five. 20 CF 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if f ound that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 ndividual has the responsibility to prove CFR 416.994(b)(1)(iv). In general, the i disability. 20 CFR 4 16.912(a). An impair ment or combi nation of impairments is not severe if it does not signific antly limit an individual's physical or mental ability to do

basic work activities. 20 CFR 416.921(a ). The in dividual has the resp onsibility 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. 2 0 CFR 41 6.920a(a). First, an i ndividual's pertinent sym ptoms, signs, a nd 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 whic h the impairment(s) interferes with an individual's ability to func tion independently, appropriately , effectively, and on Id.; 20 CFR 416.920a(c)(2). Chronic m ental disorders, structured sustained basis. and the effect on the overall degree of settings, medication, and other treatment functionality are considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social f unctioning; concentration, persistence or pace; and episodes of decompensat ion) are consider ed when deter mining an indiv idual'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 repr esents a degree of limitation t hat 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 CF R 416.920a(d)(2). If the severe mental im pairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CF R 416.920a(d)(3).

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

The severity of the Claimant's alleged impa irment(s) is considered under St ep 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 purpos es, the impairment must be seevere. 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).

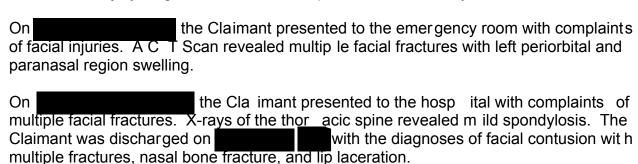
Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

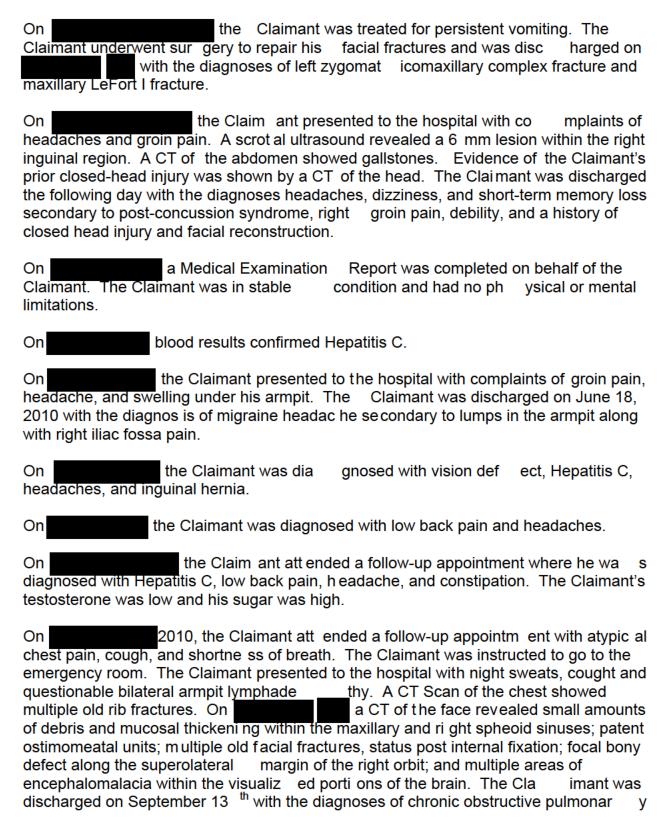
- 1. Physical functions such as wa lking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- 2. Capacities for seeing, hearing, and speaking;
- 3. Understanding, carrying out, and remembering simple instructions;
- 4. Use of judgment;
- 5. Responding appropriately to supervision, co-workers and usual work situations; and
- 6. Dealing with changes in a routine work setting.

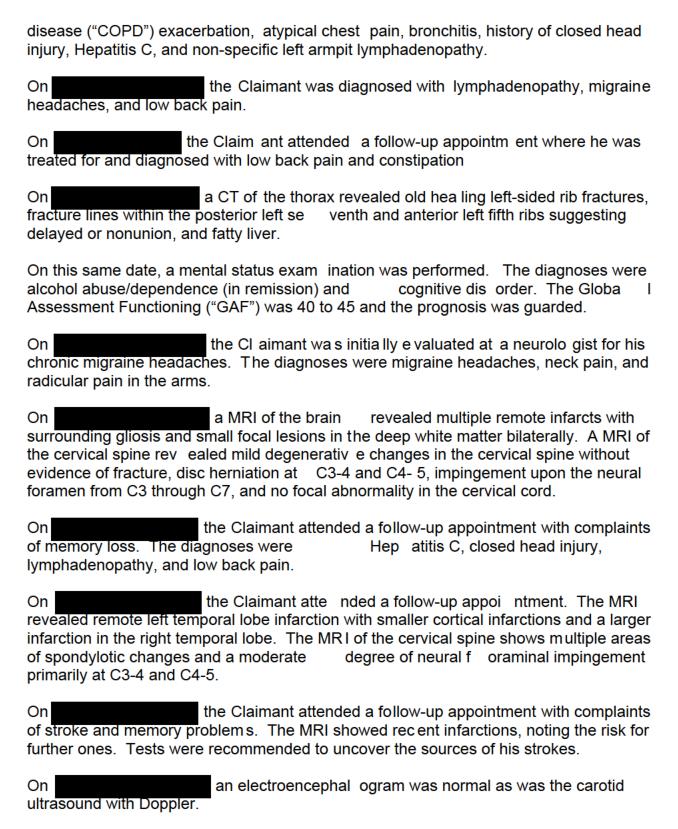
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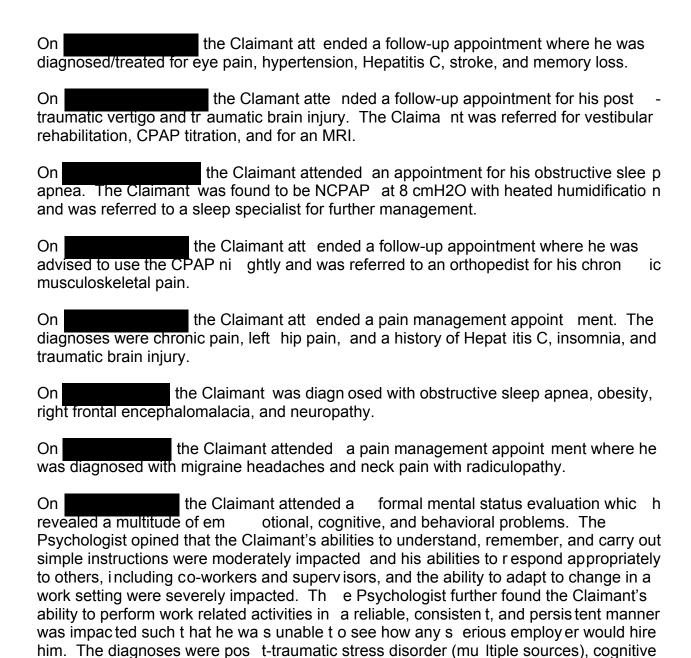
The second step allows for dismissal of a disability claim obviously lacking in medical merit. Higgs v Bowen, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an admin istrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *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 Cla imant alleges di sability due to fractured collar bone, bac k pain, groin pain, v ision loss, chest pain, los s of equ ilibrium, Hepatitis C, liver diseas e, closed head injury, migraine headaches, depression, and anxiety.









On this dat e, the Mental Res idual Functional Capacity was c ompleted. The Claimant was marked limited in 12 of the 20 factors.

otherwise specified), ADHD, sleep disorder, and personality changes. The GAF was 50

and the prognosis was poor. The Claimant was found to be unemployable.

chronic pain dis order, chronic sever e

tine addiction, lear ning disorder (not

disorder, major depression (chronic, severe),

alcohol addiction (3 years remission), nico

On the Claimant attended a follow-up appointment for treatment for his testicular hernia, headaches, rectal hemorrhoids, and Hepatitis C. A liver transplant was recommended.

On the Claimant's physician wrote a letter stating that the Claimant was a candidate for a liver transplant.

On the Claimant's treating physician wrot e a letter stating that the Claimant was unable to return to his prior employment.

As previously noted, the Claim ant 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 physical and mental 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 minimus* effect on the Claimant's basic work activities. Further, the impairments have lasted continuous ly for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the seque ntial an alysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or co mbination of impairm ents, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claim ant has alleged physical and mental disabling impairments due to fractur ed collar bone, back pain, groin pain, v ision loss, chest pain, loss of equilibrium, Hepatit is C, liv er disease, closed head injury , migraine headaches, depression, and anxiety.

Listing 1.00 (musculoskeletal system), Listing 3.00 (respiratory syst em), Listing 4.00 (cardiovascular system), Listing 5.00 (digestine vertical vertical system), and Listing 12.00 (mental disorders) were considered in light of the objective evidence. Ultimately, based on the medical evidence, it is found that the Claimant's impairment(s) do not meet the intent and severity requirements of a specific listend impairment. Accordingly, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a)

The fourth step in analyzing a dis ability claim requires an assessment of the Claimant's residual f unctional capacity ("RFC") and pas—t relevant em—ployment. 20 CF—R 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 lear n the position. 20 CF R 416.960(b)(1). Vocational fact ors of age, education, and work experience, and whet her the past relevant employment exists in significant numbers in the natio nal economy is not consider ed. 20 CF R 416.960(b)(3). RFC is as sessed 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 c lassified as sedentary, light, medium, heavy, and very heavy. 2 0 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 r equired 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 invo Ives sit ting 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. A n 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 object is weighing up to 50 pounds. 20 CFR 416.967(d). A n individual capable of heavy work is also c apable 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 requirements, i.e. sitting, strength demands (exertional standing, walk ing, lifting, carrying, pushing, or pulling) are consider ed nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparis on of the individual's residual functional c apacity with the demands of past relevant work. an individual can no longer do past relevant work the same residual functional capacity assessment along with an individual's a ge, 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 so me physical feature(s) of certain work settings (i.e. ca n't tolerate dust or fumes); or di fficulty performing the manipulative or postur al functions of some work such as reaching, handling, stooping,

climbing, crawling, or crouching. 20 CFR 4 16.969a(c)(1)(i) - (vi). If the imp airment(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 bas ed upon the pr inciples in the appr opriate sections of the regulations, giving consideration to the rules fo r specific case situat ions in Appendix 2. *Id.* 

The Claim ant's prior work history consists of work as a tree cutter. In light of the Claimant's testimony and in consideration of the Oc cupational Code, the Claimant's prior work is classified as semi-skilled, heavy work.

The Claimant testified that he is able to wa Ik short distances; sit for one hour; lift/carry about 5 pounds; stand for short periods of time; and is able to bend but experiences difficulties squatting. Mentally, the Claimant was found markedly limited in 12 of the 20 factors contained on the Ment al Residual F unctional C apacity Assessment with GAF scores between 40 and 50. The Psychologist who performed the formal mental status examination opined that no serious employer would hire the Claimant. 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 dis ability does not exist. 20 CFR 416.920. In consider ation of the Claimant is testimony, medical records, and current limitations, it is found that the Claimant is not able to return to past relevant work thu s the fifth step in the sequential analysis is required.

In Step 5, an assessment of the individua I's residual functional capace ity and age, education, and work experience is consider ed to determine whet her an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, the Claimant was 47 years old thus consider ed to be a v ounger individual for MA-P purposes. The Claimant has a limited educat ion. Disability is found if an individual is unab le 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 th e Claimant has the re sidual capacity to substantial gainful employ ment. 20 CFR 416.960(2); Richardson v Sec of H ealth and Human Se rvices, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has th vocational qualifications to perform specif ic jobs is needed to meet the burde n. 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 nation al 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 reveals that t he Claimant suffers from several seriou s physical and mental impairm ents. Accordingly, the total impact caused by the

combination of physical and m ental impairments, as detail ed above, suffered by the Claimant must be considered. In doing so, it is f ound that the combination of the Claimant's physical and mental impairments have a major effect on his ability to perform basic work activities. The Claim ant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a) due to the nature of the combined limitations. A fter review of the entire record, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

The State Disability Assist ance program, which pr ovides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 et seq. and Michigan Administrative Code Rule 400.3151 – 400.3180. Department polic ies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which m eets federal SSI dis ability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefit s based on disab ility or blindness automatically qualifies an individual as disab led for purposes of the SDA program.

In some circumstances benefit payments can, or must, be restricted to someone other than the individual (program group). BAM 420. A protecti ve payee is a person/agency selected to be responsible for receiving and managing the cash assistance on behalf of the individual (program group) as a third party. BAM 420. Restricted payments ar e required in any of the following circumstances:

- Court-ordered shelter arrearage collection
- Third-party resource disqualification
- Minor parent
- Substance Abuse
- Client convicted of a drug-related felony
- Money mismanagement
- A child(ren) receiving FIP has a legal guardian
- Eviction or threatened eviction

BAM 420. Restricted payment status is reviewed when appropriate but at least at every determination. BAM 420. The client has the right to request and be granted a review of the restricted payment status every six months. BAM 420. An individual (group) may request a hearing to dispute a decis ion to beg in or continue r estricted payments or dispute the selection of a protected pay ee. BAM 420. Restricted payments are continued until the hearing matter is resolved. BAM 420.

In this case, the Claimant is found disabled for purposes of the MA-P program; therefore he if found 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 the Claimant disabled for purposes of the MA-P and SDA benefit programs.

# Accordingly, it is ORDERED:

- 1. The Department's determination is REVERSED.
- 2. The Department shall initiate proc essing of the May 10, 2010 application, with retroactive benefits to February 2010, to determine if all other non-medical criteria are met and inform the Claimant and his Authorized Hearing Represent ative of the det ermination in accorda nce with department policy.
- 3. The Department shall, in light of the Claimant's history of alcohol abuse and cognitive dysfunction, evaluate the need for a protective payee in accordance with department policy.
- 4. The Department shall supplement fo r any lost benefits (if any) that the Claimant was entitle d to receive if otherwise eligible and qualifie d in accordance with department policy.
- 5. The Department shall review the Claimant's continued eligibility in January 2013 in accordance with department policy.

Colleen M. Mamelka Administrative Law Judge For Maura Corrigan, Director Department of Human Services

Collein M. Mamilka

Date Signed: December 14, 2011

Date Mailed: December 14, 2011

**NOTICE**: Administrative Hearings may or der 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 Hear ings will not orde rarehearing 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 ti mely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing <u>MAY</u> be granted if there is newly discovered evidence that could affect the outcome
  of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
  - misapplication of manual policy or law in the hearing decision,
  - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
  - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at Michigan Administrative hearings

Re

consideration/Rehearing Request

P. O. Box 30639

Lansing, Michigan 48909-07322

## CMM/cl

