

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

IN THE MATTER OF:

[REDACTED]

Reg No.: 2010-46244
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: January 24, 2011
Macomb County DHS (36)

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 Sterling Heights, Michigan on Monday, January 24, 2011. The Claimant appeared, along with [REDACTED] and testified. The Claimant was represented by [REDACTED] 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.

ISSUE

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

FINDINGS OF FACT

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

1. 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 Team (“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 received 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 Claimant alleged physical disabling impairments due to a fractured collar bone, back pain, groin pain, vision loss, chest pain, loss of equilibrium, Hepatitis C, liver disease, closed head injury, and migraine headaches.
7. The Claimant alleged mental disabling impairments due to anxiety and depression.
8. At the time of hearing, the Claimant was [REDACTED] years old with an [REDACTED] birth date; was 5’11” in height; and weighed 250 pounds.
9. The Claimant has a limited education with an employment history 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 Bridges Administrative Manual (“BAM”), the Bridges Eligibility Manual (“BEM”), and the Bridges Reference Tables (“RFT”).

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence

from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 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 are 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 fractured collar bone, back pain, groin pain, vision loss, chest pain, loss of equilibrium, Hepatitis C, liver disease, closed head injury, migraine headaches, depression, and anxiety.

On [REDACTED] the Claimant presented to the emergency room with complaints of facial injuries. A CT Scan revealed multiple facial fractures with left periorbital and paranasal region swelling.

On [REDACTED] the Claimant presented to the hospital with complaints of multiple facial fractures. X-rays of the thoracic spine revealed mild spondylosis. The Claimant was discharged on [REDACTED] [REDACTED] with the diagnoses of facial contusion with multiple fractures, nasal bone fracture, and lip laceration.

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On [REDACTED] the Claimant was treated for persistent vomiting. The Claimant underwent surgery to repair his facial fractures and was discharged on [REDACTED] with the diagnoses of left zygomaticomaxillary complex fracture and maxillary LeFort I fracture.

On [REDACTED] the Claimant presented to the hospital with complaints of headaches and groin pain. A scrotal ultrasound revealed a 6 mm lesion within the right inguinal region. A CT of the abdomen showed gallstones. Evidence of the Claimant's prior closed-head injury was shown by a CT of the head. The Claimant was discharged the following day with the diagnoses headaches, dizziness, and short-term memory loss secondary to post-concussion syndrome, right groin pain, debility, and a history of closed head injury and facial reconstruction.

On [REDACTED] a Medical Examination Report was completed on behalf of the Claimant. The Claimant was in stable condition and had no physical or mental limitations.

On [REDACTED] blood results confirmed Hepatitis C.

On [REDACTED] the Claimant presented to the hospital with complaints of groin pain, headache, and swelling under his armpit. The Claimant was discharged on June 18, 2010 with the diagnosis of migraine headache secondary to lumps in the armpit along with right iliac fossa pain.

On [REDACTED] the Claimant was diagnosed with vision defect, Hepatitis C, headaches, and inguinal hernia.

On [REDACTED] the Claimant was diagnosed with low back pain and headaches.

On [REDACTED] the Claimant attended a follow-up appointment where he was diagnosed with Hepatitis C, low back pain, headache, and constipation. The Claimant's testosterone was low and his sugar was high.

On [REDACTED] 2010, the Claimant attended a follow-up appointment with atypical chest pain, cough, and shortness of breath. The Claimant was instructed to go to the emergency room. The Claimant presented to the hospital with night sweats, cough and questionable bilateral armpit lymphadenopathy. A CT Scan of the chest showed multiple old rib fractures. On [REDACTED] a CT of the face revealed small amounts of debris and mucosal thickening within the maxillary and right sphenoid sinuses; patent ostiomeatal units; multiple old facial fractures, status post internal fixation; focal bony defect along the superolateral margin of the right orbit; and multiple areas of encephalomalacia within the visualized portions of the brain. The Claimant was discharged on September 13th with the diagnoses of chronic obstructive pulmonary

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disease ("COPD") exacerbation, atypical chest pain, bronchitis, history of closed head injury, Hepatitis C, and non-specific left armpit lymphadenopathy.

On [REDACTED] the Claimant was diagnosed with lymphadenopathy, migraine headaches, and low back pain.

On [REDACTED] the Claimant attended a follow-up appointment where he was treated for and diagnosed with low back pain and constipation.

On [REDACTED] a CT of the thorax revealed old healing left-sided rib fractures, fracture lines within the posterior left seventh and anterior left fifth ribs suggesting delayed or nonunion, and fatty liver.

On this same date, a mental status examination was performed. The diagnoses were alcohol abuse/dependence (in remission) and cognitive disorder. The Global Assessment Functioning ("GAF") was 40 to 45 and the prognosis was guarded.

On [REDACTED] the Claimant was initially evaluated at a neurologist for his chronic migraine headaches. The diagnoses were migraine headaches, neck pain, and radicular pain in the arms.

On [REDACTED] a MRI of the brain revealed multiple remote infarcts with surrounding gliosis and small focal lesions in the deep white matter bilaterally. A MRI of the cervical spine revealed mild degenerative changes in the cervical spine without evidence of fracture, disc herniation at C3-4 and C4-5, impingement upon the neural foramen from C3 through C7, and no focal abnormality in the cervical cord.

On [REDACTED] the Claimant attended a follow-up appointment with complaints of memory loss. The diagnoses were Hepatitis C, closed head injury, lymphadenopathy, and low back pain.

On [REDACTED] the Claimant attended a follow-up appointment. The MRI revealed remote left temporal lobe infarction with smaller cortical infarctions and a larger infarction in the right temporal lobe. The MRI of the cervical spine shows multiple areas of spondylotic changes and a moderate degree of neural foraminal impingement primarily at C3-4 and C4-5.

On [REDACTED] the Claimant attended a follow-up appointment with complaints of stroke and memory problems. The MRI showed recent infarctions, noting the risk for further ones. Tests were recommended to uncover the sources of his strokes.

On [REDACTED] an electroencephalogram was normal as was the carotid ultrasound with Doppler.

On [REDACTED] the Claimant attended a follow-up appointment where he was diagnosed/treated for eye pain, hypertension, Hepatitis C, stroke, and memory loss.

On [REDACTED] the Claimant attended a follow-up appointment for his post-traumatic vertigo and traumatic brain injury. The Claimant was referred for vestibular rehabilitation, CPAP titration, and for an MRI.

On [REDACTED] the Claimant attended an appointment for his obstructive sleep apnea. The Claimant was found to be NCPAP at 8 cmH₂O with heated humidification and was referred to a sleep specialist for further management.

On [REDACTED] the Claimant attended a follow-up appointment where he was advised to use the CPAP nightly and was referred to an orthopedist for his chronic musculoskeletal pain.

On [REDACTED] the Claimant attended a pain management appointment. The diagnoses were chronic pain, left hip pain, and a history of Hepatitis C, insomnia, and traumatic brain injury.

On [REDACTED] the Claimant was diagnosed with obstructive sleep apnea, obesity, right frontal encephalomalacia, and neuropathy.

On [REDACTED] the Claimant attended a pain management appointment where he was diagnosed with migraine headaches and neck pain with radiculopathy.

On [REDACTED] the Claimant attended a formal mental status evaluation which revealed a multitude of emotional, cognitive, and behavioral problems. The Psychologist opined that the Claimant's abilities to understand, remember, and carry out simple instructions were moderately impacted and his abilities to respond appropriately to others, including co-workers and supervisors, and the ability to adapt to change in a work setting were severely impacted. The Psychologist further found the Claimant's ability to perform work related activities in a reliable, consistent, and persistent manner was impacted such that he was unable to see how any serious employer would hire him. The diagnoses were post-traumatic stress disorder (multiple sources), cognitive disorder, major depression (chronic, severe), chronic pain disorder, chronic severe alcohol addiction (3 years remission), nicotine addiction, learning disorder (not otherwise specified), ADHD, sleep disorder, and personality changes. The GAF was 50 and the prognosis was poor. The Claimant was found to be unemployable.

On this date, the Mental Residual Functional Capacity was completed. The Claimant was marked limited in 12 of the 20 factors.

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

On [REDACTED] the Claimant's treating physician wrote a letter stating that the Claimant was unable to return to his prior employment.

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 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 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 has alleged physical and mental disabling impairments due to fractured collar bone, back pain, groin pain, vision loss, chest pain, loss of equilibrium, Hepatitis C, liver disease, closed head injury, migraine headaches, depression, and anxiety.

Listing 1.00 (musculoskeletal system), Listing 3.00 (respiratory system), Listing 4.00 (cardiovascular system), Listing 5.00 (digestive disorders), Listing 11.00 (neurological 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 listed impairment. 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 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.*

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

The Claimant testified that he is able to walk 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 Mental Residual Functional Capacity 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 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 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 47 years old thus considered to be a younger individual for MA-P purposes. The Claimant has a limited education. 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 reveals that the Claimant suffers from several serious physical and mental impairments. Accordingly, the total impact caused by the

combination of physical and mental impairments, as detailed above, suffered by the Claimant must be considered. In doing so, it is found that the combination of the Claimant's physical and mental impairments have a major effect on his ability to perform basic work activities. The Claimant 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. After 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 Assistance program, which provides 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 policies 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 meets federal SSI disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled 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 protective 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 are 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 decision to begin or continue restricted payments or dispute the selection of a protected payee. 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 is 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 processing 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 Representative of the determination in accordance 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 for any lost benefits (if any) that the Claimant was entitled to receive if otherwise eligible and qualified 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

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

Date Signed: December 14, 2011

Date Mailed: December 14, 2011

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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.

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

- A rehearing **MAY** 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
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CMM/cl

cc:

