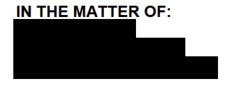
STATE OF MICHIGAN MICHIGAN ADMINISTRATIVE HEARING SYSTEM ADMINISTRATIVE HEARINGS FOR THE DEPARTMENT OF HUMAN SERVICES



Reg. No.: 2011-2474

Issue No.: 2009

Case No.:

Hearing Date: March 14, 2011 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 Detroit, Michigan on Monday , March 14, 2011. The Claimant appeared, along with Sandra Wr obel, and testified. The Claimant 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 evidence. The records were received, reviewed, and forwarded to the State Hearing Review Team ("SHRT") for consideration. On November 1, 2010 and September 28, 2011, the SHRT found the Claimant not disabled. This matter is now before the undersigned for a final determination.

ISSUE

Whether the Department proper ly 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 on t he competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Claimant submitt ed an application for public assistance seeking MA-P benefits on February 25, 2009.

- 2. On March 17, 2009, the Medical Revi ew Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 5, 6)
- 3. The Department notified the Claimant of the MRT determination.
- 4. On June 8, 2009, the Department received the Claimant's timely written request for hearing. (Exhibit 2)
- 5. On November 1, 2010 and September 28, 2011, the SHRT found the Claimant not disabled. (Exhibit 3)
- 6. The Claimant alleged physical dis abling im pairments due to hands, knee, and back pain, chronic obstructive pulmonar y disease ("COPD"), congestive heart failure, high blood pressure, abdominal pain, headaches, dizziness, and s eizure disorder.
- 7. The Claimant alleged mental disabling impairm ents due to depression and anxiety.
- 8. At the time of hearing, the Claim ant was years old with a birth date; was 5'6½" in height; and weighed approximately 230 pounds.
- 9. The Claimant is a high school graduat e with some c ollege and an employment history in construction; as a hi-lo driv er; self-employment; and in t he automotive industry.
- 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 Eligib ility 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 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 esta blish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescri bed treatment, prognosis for recovery and/or medical assessment of ability to do work-related ac tivities or 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 disabled, 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 found that the individ ual h as 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 i ndividual has the responsibility to prove 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 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. 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. 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 f unctioning; concentration, persistence or pace; and episodes of decompensat ion) are consider ed when deter mining 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 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.

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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 o

substantiate the alleged disa bling impairments. In order to be considered disabled for MA purpos es, the impairment must be se vere. 20 CFR 916. 920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it signific antly limits an in dividual'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 walk ing, 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.

ld.

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 disability due to hands, knee, and back pain, COPD, congestive heart failure, high bl ood pressure, abdominal pain, headaches dizziness, seizure disorder, depression, and anxiety.

On the Claim ant presented to the hospi tal with complaints of shortness of breath and dyspne a. A persantine/cardiolite stress test was performed. Planar and SPECT im ages showed left ventricular enl argement with ir regularity of perfusion. The wall motion showed severe gener alized hypokinesis with left ventricular ejection of 25 percent. The Claimant was treated and discharged on with

the diagnoses of cardiomyopathy, obstructive sleep apnea, acute COPD exacerbation, hypertension, and chest pain.

On the Claimant attended a c onsultative evaluation. The physica I examination was essentially unremarkable. The Claimant's ability to bend, stoop, sit, and stand were within normal limits noting that he was able to climb stairs. A Medical Examination Report was completed. The current diagnoses were seizure disorder (clinically) and high blood pressure (mild.). From a neurologic standpoint, no abnormalities were detected. De spite this, the Claimant's condition was considered to be deteriorating.

On and the Claimant attended a consultative psychologic al evaluation. The Claimant's sell festeem was poor noting feelings of worthlessness, uselessness, helpless ness, and hopelessne ss. The Claimant's full-scale IQ on the Wechsler Adult Intelligence Sc ale-IV Edit ion ("WAIS-IV") was 84, thus in the lowaverage range. The Claimant's reading/spelling level was in the 4th grade based on the Wide Range Achievement Test - IV Ed ition ("WRAT-IV") while his math level was in grade 6. The Psy chologist opi ned that the Claimant's abilities to understand. remember, and carry out simple instructions were not seve rely impacted. Conversely, his abilities to respond appropriately to ot hers, including co-workers and supervisors, and adapt to changes in a work setting were moderately to severely impacted. The tivities in a reliable, persistent, and Claimant's ability to perform work-related ac consistent manner was found to be at least moderately impacted. The diagnoses were mood disorder with features of major depressive disor der (with anger and related ress disorder. The Global Assessment feelings) and chronic, post-traumatic st Functioning ("GAF") was 50 and the prognosis was poor.

On a Medical Examination Report was completed by the primary care provider on behalf of the Claimant. The current diagnoses were seizure disorder, hypertension, COPD, and coronary artery disease. The Claimant was limited to the occasional lifting/carrying of 10 pounds; st anding and/or walking less than 2 hours during an 8 hour workday; and able to perform repetitive actions with his upper extremities. Mentally, the Claimant was not limited.

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 some 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 deminimus effect on the Claimant's basic work activities. Further, the impairmentshave 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 hands, knee, and bac k pain, chronic obstructive pulmonary disease ("COPD"), congestive heart failure, high blood pressure, abdominal pain, headaches, dizziness, seizure disorder, anxiety, and depression.

Listing 1.00 (musculoskeletal system), Listing 3.00 (respiratory syst em), Listing 4.00 (cardiovascular system), Listing 5.00 (digestine vertical vertical vertical vertical vertical vertical system), Listing 5.00 (digestine vertical vert

The fourth step in analyzing a dis ability claim requires an assessment of the Claimant's residual f unctional capacity ("RFC") and past 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 learn the position. 20 CF R 416.960(b)(1). Vocational fact ors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 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 li fting or carrying of objects weighing up t o 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). 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, 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 function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tole rating some physical f eature(s) of certain work settings (i.e. can't tolera te 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-e xertional aspects of work-related activities, the rules in Appendi x 2 do n ot direct factual conclusions o f disabled or not disabled. 20 CFR 416. 969a(c)(2). The determination of whether disability e xists is b ased upon the princi ples in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. ld.

Over the past 15 years, the Cl aimant worked in construction; as a hi-lo driver; was self-employed; and in the aut omotive industry. In light of the Claimant's testimony and in consideration of the Occupatio nal Code, the Claimant's prior work in construction (few months), as a hi-lo driver, and in the automotive industry history is considered unskilled, light work while his self-employment (contractor) is classified as some emi-skilled light/medium work.

The Claimant testified that he is able to lift/carry approximately 20 pounds; walk short distances; stand and/or sit for short periods of time; and has difficulty bending an disquatting. The objective medical records show that the Claim ant's condition is deteriorating, restricting him to the occasional lifting/carrying of 10 pounds with standing

and/or walking at less than 2 hours in an 8 hour work day. Mentally, the Claimant's self-esteem was poor and his IQ was in the low average range, placing him at the 4th and 6th grade level, despite 2 year—s of college. The Claimant—was able to understand, remember, and carry out simple instructions—. If the impairment—or combination of impairments does not limit an indi—vidual's physical or mental ability to do basic wor—k activities, it is not a severe impairment(s—) and dis—ability does not exist—. 20 CFR 416.920. In consider ation of the Claimant—'s testimony, medical records, and current physical and mental limitations, it is found that the Claimant is unable to return to past relevant employment; thus Step 5 of 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 54 years old, thus considered to be closely approaching advanced age for MA-P purposes. The Claimant is a high school graduat e 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 Heal th and Hum an Services, 587 F 2d 321, 323 (CA 6, 1978). Medical-Vocational guide lines found at 20 CF R Subpart P, Appendix II, may be used to satisfy the burden of provi ng that the individual can perform specific Heckler v Campbell, 461 US 458, 467 (1983); jobs in the national economy. Secretary, 667 F2d 524, 529 (CA 6, 1981) cert den 461 US 95 7 (1983). Individuals approaching advanced age (age 50-54) may be significantly limited in vocationa adaptability if they are restricted to sedentary work. 20 CF R 416.963(d). Individuals approaching advanced age (age 50-54) may be significantly limited in vocationa adaptability if they are restricted to sedentary work. 20 CFR 416.963(d).

In this case, the evidenc e reveals t hat the Claimant suffers with seizures, cardiomyopathy, obstructive sleep apnea, COPD, chest pain (noting a stress induce d ejection fraction of 25 percent), high blood pressure, cor onary artery disease, mood disorder, and post-traumatic stress disorder. In consideration of the objective findings, the total impact caused by the combinati on of medical problems suffered by the Claimant must be considered. In doing so, it is found that the Claimant maintains the physical and mental capacitie s to meet the demands required to perform sedentary work as defined in 20 CF R 416.967(a). After review of the entire record using the Medical-Vocational G uidelines [20 CFR 4 04, Subpart P, Appendix II] as a guide, specifically Rule 201.14 it is found that the Claimant is disabled for purposes of the MAP program at Step 5.

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 benefit program.

Accordingly, it is ORDERED:

- 1. The Department's determination is REVERSED.
- 2. The Department shall init ate processing of the Febr uary 25, 2009 application to determine if all other non-m edical criteria are met an d inform the Claimant and his Authorized Hearing Representative of the determination in accordance with Department policy.
- 3. The Department shall suppl ement for any lost benefits (if any) that the Claim ant was entitled to receive if otherwise el igible and qualified in ac cordance with Department policy.
- 4. The Dep artment shall review the Cla imant's continue d elig ibility in Novem ber 2012 in accordance with Department policy.

Colleen M. Mamuka

Colleen M. Mamelka

Administrative Law Judge

For Maura Corrigan, Director

Department of Human Services

Date Signed: October 19, 2011

Date Mailed: October 19, 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 <u>MAY</u> 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

cc: