

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-35251  
Issue No: 2009

[REDACTED]

Calhoun County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. After due notice, a telephone hearing was held on August 25, 2011. Claimant personally appeared and testified.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P), and Retro MA?

FINDINGS OF FACT

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

- (1) On March 3, 2011, Claimant filed an application for MA and Retro-MA benefits alleging disability.
- (2) On May 11, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA stating Claimant is capable of performing other work, pursuant to 20 CFR 416.920(f). (Department Exhibit A, pages 69-70).
- (3) On May 16, 2011, the department caseworker sent Claimant notice that his application was denied.
- (4) On May 24, 2011, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On June 20, 2011, the State Hearing Review Team (SHRT) again denied Claimant's application stating Claimant retains the residual functional capacity to perform a wide range of simple and repetitive work. (Exhibit B, page 1).
- (6) Claimant has a history of depression and anxiety.
- (7) On September 21, 2010, Claimant reported to the Urgent Care complaining of a cough. The onset was 2 weeks ago and symptoms are worsening. Associated symptoms: shortness of breath and chest congestion. Differential diagnosis: bronchitis. (Department Exhibit A, pages 3-5).
- (8) On December 21, 2010, Claimant saw his doctor complaining of a toothache. Claimant is currently taking Prilosec and takes Alleve for aches and pains but this is not resolving the tooth pain. Claimant reported he was under a lot of stress. He lost his business and his only income is his wife's part time job. Poor sleep and easily worries, constantly anxious about aches/pains and concerned he has serious illness all the time. Prescribed Amoxicillin, Naprosyn, Nexium and Lexapro and told to continue Prilosec. Diagnosed with dentalgia, gastritis and situational anxiety/depression. Claimant completed a health history form reporting that he drank beer and wine socially and has smoked ½ a pack a day for the past 10 years. (Department Exhibit A, pages 49-50).
- (9) On December 28, 2010, Claimant was seen by his doctor complaining of his heart rate dropping to 67 since taking Lexapro. On December 24, 2010, his heart rate fell to 41 and he felt dizzy. Claimant stated it lasted for an hour and has fallen to 60 a few times since. Claimant wonders if this could be due to new medications, Amoxicillin or Lexapro. Two years ago, Claimant had full executive physical exam, angiogram, EKG, CT-cardiac, stress test, all normal, did have 30% blockage. Diagnosed with history of bradycardia with dizziness. Ordered EKG. (Department Exhibit A, pages 52-53).
- (10) On February 24, 2011, Claimant saw his doctor for pain in his lower molar. He started Amoxicillin and is feeling better but now is having dizziness and his face is flushing. He states the skin on his face feels hot. Dizziness occurs anytime and is not related to position changes. States he has not been taking Lexapro daily. Complained of heartburn. Diagnosed with dizziness, GERD, Dentalgia, and GAD. (Department Exhibit A, pages 54-55).
- (11) On February 26, 2011, Claimant presented himself to the emergency room with left-sided chest pain sustained during a ground level fall approximately 6 hours ago. He was unsure how long he had lost

consciousness. He stated he vomited once this morning. He denied any further vomiting. He stated he has a history of anxiety, but does not take anything for it. Claimant was very anxious and jumpy during the exam. He had small superficial 2-cm hematoma to the left side of his head. There was no bleeding. Urine drug screen was negative. Urinalysis, CBC with differential and BMP were all within normal limits except glucose 136. The radiologist's report was used for final interpretation and showed no acute processes, no C-spine abnormality, no hemorrhage or midline shift. A 2-view chest x-ray showed no acute processes, no infiltrates. Cardiomedial silhouette was normal. A 12-lead EKG showed a normal sinus rhythm with a normal axis. The ST segment was normal. No acute ischemia. Claimant was given 325 mg of aspirin upon presentation to the emergency department and he was given a GI cocktail later on after which he states that he has good relief of the chest pain and that has resolved. Impression: Anxiety. Claimant was prescribed Naprosyn for the mild headache and chest pain if he needs it at home. (Department Exhibit A, pages 46-48, 6-16).

- (12) On February 26, 2011, the chest x-ray showed a known pulmonary nodule at the right upper lobe unchanged since 2009. Heart size, lung fields and pleural spaces are otherwise within normal limits. The cervical spine without contrast showed there are old post traumatic changes of the spinous process of T1. There is no acute fracture seen. There is no disc herniation noted. The EKG was normal with a sinus rhythm within normal limits. (Department Exhibit A, pages 41-45).
- (13) On March 2, 2011, Claimant was seen for follow-up from his emergency room visit on February 26, 2011. Tobacco use-has no smoking history and minimal alcohol consumption. Physical exam was normal except for some chest wall pain to left lateral chest with some radiation to left shoulder. Small hematoma to left occipital area of skull, tender to palpation. Assessment: General anxiety disorder. (Department Exhibit A, pages 28-29).
- (14) On March 3, 2011, Claimant saw his doctor for persistent anxiety, depression and difficulty sleeping. Claimant states he has lost everything and now his wife is leaving him. Claimant's laboratory results were reviewed and his cholesterol was elevated. Claimant agreed to restart Lexapro and he was prescribed Elavil for sleep and Lipitor for his high cholesterol. Diagnosed with GAD, depression and hypercholesterol. (Department Exhibit A, pages 56-57).
- (15) On March 3, 2011, Claimant underwent an initial psychological assessment. Past couple of years a lot of stress and anxiety. Has had a successful company, but business has gone down. Marital relationship is not good. He has been verbally abusive to wife. Now is going through

bankruptcy. Claimant exhibited symptoms of depressed mood, decreased energy, guilt, anxiousness, panic attacks, impulsiveness, anger/irritability, emotional trauma victim and emotional trauma perpetrator. Symptoms have lasted 12 months or more. Claimant's memory and concentration were good. His insight and judgment were impaired based on it is hard for him to be nice to wife's friends. He does not like them so he refuses to socialize with them. This hurts his wife. Claimant has no friends because he was always focused on work and business. Claimant was diagnosed on Axis I: Mood Disorder; Axis IV: wife has left him; Axis V: 50. Prognosis is good. Claimant currently prescribed Lexapro. He received outpatient psychiatric treatment during his first divorce. (Department Exhibit A, pages 30-33).

- (16) On March 4, 2011, Claimant was brought into the emergency room by ambulance having trouble with new medication. He has had dizziness and weakness over the past 3 nights. He was started by his psychiatrist on three new medicines 2 days ago. He is normally on Lexapro and Lipitor, but started on hydroxyzine, citalpram and amitriptyline all at bedtime over the past 2 nights. Tonight, he took it again at about 8:00 and since that time has been dizzy to the point of having trouble balancing when he was standing up. He has had worsening anxiety and insomnia. Claimant has had progressive and significant anxiety and depression over the past couple of years. He has been under the care of a psychiatrist and has just recently been started on those 3 medicines. He is quite anxious and appears scared of his medical condition at this time. He is denying any recent illness, including fever, chills, nausea, vomiting, diarrhea or urinary symptoms. He is denying numbness, tingling or focal weakness. He has never been a smoker. Denies alcohol or illicit drugs. Normal EKG. Normal BMP. An IV was established by EMS. He receives 2 liters of normal saline here in the emergency department and is monitored for over 4 hours. At the end of the four hours, he was completely lucid with no further anxiety and he does complain of some slight dizziness, but has a steady gait. Impression: side effect to his new medicines. Plan: he will stop these medicines and make an appointment for follow-up with his psychiatrist. (Department Exhibit A, pages 17-26).
- (17) On March 15, 2011, Claimant completed the Activities of Daily Living form indicating he fixes his own lunch, does the laundry and basic housekeeping duties including windows, shops once a week for groceries, reads and watches television. (Department Exhibit A, pages 59-63).
- (18) On March 15, 2011, Claimant saw his therapist. Claimant has applied for disability because he believes he cannot think right. Claimant denies being homicidal and suicidal. Claimant believes he will function better if he knew what direction to go in the marriage. He has had an MRI to clarify whether or not there is brain damage causing him to not function as

- well. Diagnosed with mood disorder NOS. (Department Exhibit A, page 35).
- (19) On March 17, 2011, Claimant met with his therapist and his relationship problems were discussed. Claimant was diagnosed with major depression with no signs of homicidal ideation. (Department Exhibit A, page 36).
- (20) Claimant is a [REDACTED] man whose birthday is [REDACTED]. Claimant is 6'2" tall and weighs 200 lbs. Claimant completed four years of college and received a Bachelor of Science in Business Administration.
- (21) Claimant had not applied for Social Security disability benefits at the time of this hearing.

### CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program 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 Reference Tables Manual (RFT).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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 set order is used to determine disability, that being a five-step sequential evaluation process for determining whether an individual is disabled. (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the Administrative Law Judge must determine whether the claimant is engaging in substantial gainful activity. (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities. (20 CFR 404.1572(a) and 416.972(a)). "Gainful work

activity” is work that is usually done for pay or profit, whether or not a profit is realized. (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he/she has demonstrated the ability to engage in SGA. (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he/she is not disabled regardless of how severe his/her physical or mental impairments are and regardless of his/her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge must determine whether the claimant has a medically determinable impairment that is “severe” or a combination of impairments that is “severe.” (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is “severe” within the meaning of the regulations if it significantly limits an individual’s ability to perform basic work activities. An impairment or combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work. (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment. 20 CFR 416.929(a).

Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

At step three, the Administrative Law Judge must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1. (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement, (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity. (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments,

including impairments that are not severe, must be considered. (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA. (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the claimant has the residual functional capacity to do his/her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he/she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he/she is disabled.

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

At Step 1, Claimant is currently working odd jobs and testified that he has not worked full-time since June 13, 2010. Therefore, Claimant is not disqualified from receiving disability at Step 1.

At Step 2, in considering Claimant's symptoms, whether there is an underlying medically determinable physical or mental impairment(s)-i.e., an impairment(s) that can be shown by medically acceptable clinical and laboratory diagnostic techniques-that could reasonably be expected to produce Claimant's pain or other symptoms must be determined. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of Claimant's symptoms to determine the extent to which they limit Claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

At Step 2, the objective medical evidence of record shows Claimant was diagnosed with depression and anxiety. However, the objective medical evidence of record is simply not sufficient to establish that Claimant has severe physical and/or cognitive



impairments that have lasted or are expected to last 12 months or more. Accordingly, Claimant is disqualified from receiving disability at Step 2.

At Step 3 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. This Administrative Law Judge finds that Claimant's medical record will not support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. Accordingly, Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, Claimant's past relevant employment has been as a manager of a construction project for the past nine years. The objective medical evidence of record is not sufficient to establish that Claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent him from performing the duties required from his past relevant employment for 12 months or more. Accordingly, Claimant is disqualified from receiving disability at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not Claimant has the residual functional capacity to perform other jobs.

At Step 5, the burden of proof shifts to the department to establish that Claimant does have residual function capacity. The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. See discussion at Step 2 above. Finding of Facts 15, 17 and 20.

At Step 5, the objective medical evidence of record is sufficient to establish that Claimant is capable of performing at least sedentary duties. Claimant completed the Activities of Daily Living Form, indicating that he is able to do normal day-to-day activities, independently. These activities include fixing his own meals, doing household chores, grocery shopping, and watching TV. Claimant testified he does all the yard work, he can run 10 miles, stand for 24 hours and sit for as long as is required and because he is in good shape, he can lift approximately 100 pounds.

Claimant did not submit any mental status examination reports which establish any significant memory problems, illogical thoughts, problems with his judgment, or that he was not fully alert and oriented. His ability to understand and communicate did not appear to be severely affected.

The Administrative Law Judge finds that Claimant failed to provide the necessary objective medical evidence to establish that he is physically or mentally incapable of doing basic work activities. Further, there is no evidence that Claimant has a severe impairment that meets or equals a listed impairment found at 20 CFR, Part 404, Subpart P, Appendix 1.

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor. 20 CFR 416.967.

**Sedentary work.** Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

**Light work.** Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b).

**Medium work.** Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

**Heavy work.** Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

Claimant worked as a construction site manager for 9 years until June 2010. Claimant explained that he has had several near job offers, but once they review his credit report, they do not offer him the job. Claimant testified that he is able to work and just wants help getting his medical bills expunged.

As a result, Claimant has not presented the required competent, material, and substantial evidence which would support a finding that Claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). By Claimant's own repeated declarations, he wants and is able to work and just wants help paying off his medical bills. Although Claimant has cited medical problems, the clinical documentation submitted by Claimant is not sufficient to establish a finding that Claimant is disabled. There is no objective medical evidence to substantiate Claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled.

Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does establish that Claimant has the residual functional capacity to perform

other work. As a result, Claimant is disqualified from receiving disability at Step 5 based upon the fact that the objective medical evidence on the record shows he can perform sedentary work. Under the Medical-Vocational guidelines, a younger individual, age 18 through 49 (Claimant is 48 years of age), a high school graduate or more (Claimant has a Bachelor of Science degree) and a skilled or semi-skilled work history is not considered disabled pursuant to Medical-Vocational Rule 201.21. Accordingly, Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that Claimant was not eligible to receive Medical Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied Claimant's application for Medical Assistance, and retroactive Medical Assistance benefits.

Accordingly, the department's decision is AFFIRMED.

It is SO ORDERED.

/s/

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Vicki L. Armstrong  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: 8/29/11

Date Mailed: 8/29/11

**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.

VLA/ds

■ [REDACTED]