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

IN THE MATTER OF:

[redacted]

Reg. No: 2011-42466
Issue No: 2009/4031
Case No: [redacted]
Hearing Date:
September 13, 2011
Kalamazoo 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 received on June 13, 2011. After due notice, an in-person hearing was held on September 13, 2011. Claimant, and Claimant's representative, personally appeared and testified.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On January 12, 2012, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

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

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 September 17, 2010, Claimant applied for MA-P, Retro-MA and SDA.

(2) On March 15, 2011, the Medical Review Team (MRT) denied Claimant's MA application stating Claimant is capable of performing other work, pursuant to 20 CFR 416.920(f). MRT denied Claimant's SDA application stating he did not have a physical or mental impairment that prevented employment of 90 days or more. (Department Exhibit A, pages 1-2).

(3) On March 18, 2011, the department caseworker sent Claimant notice that his application was denied.

(4) On June 13, 2011, Claimant filed a request for a hearing to contest the department's negative action.

(5) On August 16, 2011, and on January 12, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA-P, Retro-MA and SDA benefits stating Claimant retains the capacity to perform light unskilled work. (Department Exhibit B, p 1; Department Exhibit C, pp 1-2).

(6) Claimant has a history of depression, severe chronic anxiety disorder, bipolar disorder, ADHD, migraines, hypertension, edema, cellulitis, emphysema, atelectasis and pulmonary embolisms.

(7) On February 9, 2009, Claimant's psychiatrist submitted a letter that Claimant's disability case remains pending and he remains totally unemployable at present. His psychiatrist indicated that there had been no significant progress regarding his condition as related to his depressive and anxiety symptoms that remain severe and caused significant impairment in his inability to function personally and occupationally. (Claimant Exhibit A, p 1).

(8) On February 13, 2009, Claimant's therapist submitted a letter indicating Claimant receives patient counseling services and psychiatric services at DeLano Clinic. He was being treated for Major Depression, Severe, Recurrent and Anxiety Disorder, Severe. She indicated that Claimant experiences symptoms of anxiety and depression on a daily basis that impair his level of function with the activities of daily living. He could grocery shop, but only during the hours of 11pm to 12am, due to his fears and anxieties. He did not evidence or report the ability to be employed in any areas at that time. He had not been employed since May 2004, when he lost his job after falling off the fork life he was driving due to syncope episode which was anxiety related. His level of social functioning was severely impaired and he does not have contacts outside of his immediate family members. (Claimant Exhibit A, p 2).

(9) On October 29, 2009, Claimant was seen by his psychiatrist. Claimant stated that he has been under more stress now that he has lost his Medicaid and he will not be able to afford his prescribed medications. His anxiety level has increased significantly as well as his depression. He denies suicidal ideation. No psychotic symptoms, although he has been off Seroquel for the past three weeks. His level of functioning remains limited because of his depressive and anxiety symptoms. He is barely able to maintain adequate ADLs. He has lost more than 10 pounds over

the past few weeks. His sleep has improved taking Trazodone. (Department Exhibit A, p 48).

(10) On December 1, 2009, Claimant was seen by his psychiatrist. He is not complaining of sedation during the day or significant increase in appetite or weight. He continues taking Trazodone at bedtime. His main complaint today was difficulty focusing and being easily distracted and staying on task. He states that he was diagnosed with Attention Deficit Disorder when he was a child and has taken Ritalin that has helped significantly. He resumed Ritalin when he was in college. He was tried on Adderall which caused significant side effects including feeling jittery and insomnia. His level of functioning remains limited and his is unemployed. Celexa and Remeron were continued and he was prescribed Ritalin. (Department Exhibit A, page 47).

(11) On February 18, 2010, Claimant was seen by his psychiatrist. Claimant stated that adding Ritalin has moderately helped in improving his cognitive functioning. He feels that the dose is not enough to help him focus and finish tasks. He has no side effects from taking Ritalin and there is no evidence of him abusing his medication. There has been no exacerbation of his depressive or anxiety symptoms. Remeron, Celexa and Trazodone were continued at the same dosage, and his Ritalin dosage was increased. (Department Exhibit, p 46).

(12) On August 7, 2010, Claimant was admitted to the hospital for chest pain, acute renal failure and bilateral lower extremity rash. The cat scan of his chest showed no evidence of aortic dissection or any other pathology other than mild emphysematous changes within the upper lung lobes. He was noted to have severe fatty infiltration of the liver. The heart was of normal size and his chest x-ray was normal. Electrocardiogram showed normal sinus rhythm. (Department Exhibit A, pp 66, 69, 94, 96-136).

(13) On August 8, 2010, a complete Renal Ultrasound showed normal ultrasounds of the kidneys and urinary bladder. (Department Exhibit A, pp 67, 94, 128).

(14) On August 11, 2010, Claimant was discharged from the hospital. He had significant elevation of leukocytes on admission which decreased to normal following antibiotic therapy. It was determined that he had a cellulitis of the lower extremities; however, this seemed to be severe, both biochemically and clinically. He was therefore started empirically on vancomycin antibiotic therapy. He had quick clearing of his symptoms of the lower extremities. He did show some blotchy subcutaneous hemorrhage about the ankles which stabilized and was regressing by the time of discharge. (Department Exhibit A, p 95).

(15) On January 7, 2011, Claimant was evaluated by a doctor at Michigan Medical Consultants. Claimant has a history of migraine headaches over the past 25 years. He states he gets them 5-6 times a week. He states it is mostly right temporal. He does get associated nausea and describes it as a sharp pain. He does continue to have recurrent headaches and this may be a manifestation of his anxiety and depression. He is not on any treatment for it. He does however take Celexa and Remeron for his depression. There were no focal neurological deficits today and physically otherwise he appeared stable. At this point, a neuropsych evaluation would be indicated. (Department Exhibit A, pp 12-14).

(16) On February 1, 2011, Claimant was evaluated by the Michigan Disability Determination Service. His psychiatric/psychological medical report reflects his evaluation was based on a reported disability of syncope, migraine headaches, bipolar disorder, depression, and anxiety. Claimant stated he has seen a psychiatrist and been medicated since the age of 9. He gets migraines 5 nights a week. He uses Ultram for mild ones and medical marijuana for more severe. The psychologist noted Claimant appeared to be oriented to reality during the evaluation. He displayed low self-esteem. He appeared to be motivated to participating in the evaluation, had insight into his condition and did not tend to exaggerate symptoms. He presented as somewhat anxious and sad, with very brief moments of appearing somewhat friendly. His affect was flat at times, but also somewhat nervous appearing at times and generally appropriate with discussion. Diagnoses: Axis I: bipolar disorder, anxiety disorder, ADHD; Axis II: personality disorder; Axis III: per claimant's report, syncope, migraine headaches, high blood pressure, high cholesterol and vision concerns; Axis IV: medical issues, lack of health insurance, financial concerns, history of legal involvement, social isolating/limited social support; Axis V: GAF: 50 (current). Prognosis: Very guarded. Claimant is participating in medical care and medication monitoring but does not have health insurance and is concerned about being able to participate in such needed services. His is taking psychiatric meds when able to afford them, but has not been able to afford medical medications. He was in counseling in the past, but not currently. He may benefit from participation in individual therapy in order to address coping skills and other personal issues. It appears that the issues he is dealing with may likely last into the next year. (Department Exhibit A, pp 4-9).

(17) On July 30, 2011, Claimant was admitted to the hospital for a pulmonary embolism in the left lower lobe, bilateral lower extremity rash and edema, acute kidney injury, and tobacco abuse. His echocardiogram showed normal left ventricular ejection fraction of 70 percent. Normal left ventricular wall thickness and size. Normal diastolic function. No regional wall motion abnormalities. No significant valvular pathology noted. The lower extremity venous Dopplers were negative for deep vein thrombosis

bilaterally. The CAT scan pulmonary embolism protocol showed left lower lobe pulmonary embolus. Localized segmental and subsegmental branches. Small left pleural effusion. Patchy bibasilar and lingular opacities, which are not specific and may represent atelectasis versus early infarct. Diffuse fatty infiltration of the liver and upper zone predominant emphysema. Chest x-ray showed minimal bibasilar atelectasis. Claimant had a workup for vasculitis and the results were negative. He was clinically stable with regards to his pulmonary embolism. His pleuritic chest pain was well controlled with oral Norco, which he was taking only twice daily, which is his long term dose of Norco. He has macrocytosis. His vitamin B12 and folic acid levels were checked and were normal. He did have a fatty liver per the CAT scan, and the macrocytosis could be related to the liver disease. He also had a rash and edema in bilateral lower extremities and blisters on both of his heels, which had ruptured and had eschars, over bilateral heels. The rash was healing up. His creatinine level was 1.4 at admission. It improved and on the day of discharge it was 1.4 again. He was instructed to drink plenty of fluids to avoid dehydration and to have a repeat BMP in a couple of days to follow up on his renal function. Claimant is a smoker and he was warned to quit smoking because it increases his risk for clots. (Claimant Exhibit B, p 1-7).

(18) Claimant is a 46 year old man whose birthday is [redacted]. Claimant is 5'9" tall and weighs 210 lbs. Claimant completed his GED and operated a forklift for 17 years. Claimant last worked in July 2004.

(19) Claimant was appealing the denial of Social Security disability at the time of the hearing.

CONCLUSIONS OF LAW

The Medical Assistance ("MA") program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, (DHS or department), 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").

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

> Sec. 604 (1). The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:
>
> (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

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 CRF 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 (e.g., 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 to 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 3 to Step 4. 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 4 and 5. 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).

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 and testified that he has not worked since July 2004. Therefore, he is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual 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, Claimant alleges disability due to depression, severe chronic anxiety disorder, bipolar disorder, ADHD, migraines, hypertension, edema, cellulitis, emphysema, atelectasis and pulmonary embolisms. In support of his claim, some older records from as early as 2006 were submitted which document a normal electroencephalogram and a cat scan of his head showing no abnormalities. He also submitted records from an emergency room visit in 2008 where he was evaluated based on a letter he had written the department expressing his anger over being denied social security disability. He was he was deemed safe and not dangerous to self or others as a result of the ER evaluation and was released home.

In February 2009, Claimant's psychiatrist and therapist submitted letters indicating Claimant's depressive and anxiety symptoms made him totally unemployable at present because they significantly impaired his ability to function personally and occupationally.

On December 1, 2009, Claimant was seen by his psychiatrist. His main complaint today was difficulty focusing and being easily distracted and staying on task. He stated that he was diagnosed with Attention Deficit Disorder when he was a child and had taken Ritalin which helped significantly. He was prescribed Ritalin.

On August 7, 2010, Claimant was admitted to the hospital for chest pain, acute renal failure and bilateral lower extremity rash. The cat scan of his chest showed no evidence of aortic dissection or any other pathology other than mild emphysematous changes within the upper lung lobes. He was noted to have severe fatty infiltration of the liver. The heart was of normal size and his chest x-ray was normal. Electrocardiogram showed normal sinus rhythm. On August 8, 2010, a complete Renal Ultrasound showed normal ultrasounds of the kidneys and urinary bladder.

On January 7, 2011, Claimant was evaluated by a doctor at Michigan Medical Consultants. Claimant reported a history of migraine headaches over the past 25 years. He stated he gets them 5-6 times a week. He stated it was mostly right temporal. He reported that he continued to have recurrent headaches but he is not on any treatment for it. There were no focal neurological deficits today and physically otherwise he appeared stable.

On February 1, 2011, Claimant was evaluated by the Michigan Disability Determination Service. His psychiatric/psychological medical report reflects his evaluation was based on a reported disability of syncope, migraine headaches, bipolar disorder, depression, and anxiety. The psychologist noted Claimant appeared to be oriented to reality during the evaluation. He appeared to be motivated to participating in the evaluation, had insight into his condition and did not tend to exaggerate symptoms. He presented as somewhat anxious and sad, with very brief moments of appearing somewhat friendly. His affect was flat at times, but also somewhat nervous appearing at times and generally appropriate with discussion. Diagnoses: bipolar disorder, anxiety disorder, ADHD; Axis V: GAF: 50 (current). Prognosis: Very guarded.

On July 30, 2011, Claimant was admitted to the hospital for a pulmonary embolism in the left lower lobe, bilateral lower extremity rash and edema, acute kidney injury, and tobacco abuse. His echocardiogram showed normal left ventricular ejection fraction of 70 percent. Normal left ventricular wall thickness and size and normal diastolic function. The lower extremity venous Dopplers were negative for deep vein thrombosis bilaterally. The CAT scan pulmonary embolism protocol showed left lower lobe pulmonary embolus. Diffuse fatty infiltration of the liver and upper zone predominant emphysema. Chest x-ray showed minimal bibasilar atelectasis. Claimant had a workup for vasculitis and the results were negative. He did have a fatty liver per the CAT scan.

Claimant's psychiatric exam in February 2011 indicates that Claimant reported syncope and migraine headaches. However, Claimant's medical records include no evidence of a formal diagnosis of migraines or syncope. Therefore, these are not considered medically determinable impairments and cannot be considered severe impairments.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Claimant has presented some limited medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. The medical evidence has established that Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, 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 individual'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 depression, severe chronic anxiety disorder, bipolar disorder, ADHD, hypertension, edema, cellulitis, emphysema, atelectasis and pulmonary embolisms.

Listing 3.00 (respiratory system), Listing 4.00 (cardiovascular system), Listing 8.00 (skin disorders), and Listing 12.00 (mental disorders) were considered in light of the objective evidence. Based on the foregoing, it is found that Claimant's impairment(s) does not meet the intent and severity requirement of a listed impairment; therefore, Claimant cannot be found disabled, or not disabled, at Step 3. Accordingly, 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 individual'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 are 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 additional 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, e.g., 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 to the demands of past relevant work must be made. *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 functioning 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 (e.g., 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.*

Claimant's prior work history consists of work as a forklift operator. In light of Claimant's testimony, and in consideration of the Occupational Code, Claimant's prior work is classified as unskilled, light work.

Claimant testified that he is able to walk short distances and can lift/carry approximately 50 pounds and can stand or walk for only 15 minutes at a time. If the impairment or combination of impairments does not limit an individual's 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 Claimant's testimony, medical records, and current limitations, it is found that Claimant is unable to return to past relevant work; thus Claimant would be found not disabled at Step 4.

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 46 years old and was, thus, considered to be a younger individual for MA-P purposes. Claimant has a GED. 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). The age for younger individuals (under 50) generally will not seriously affect the ability to adjust to other work. 20 CFR 416.963(c). Where an individual has an impairment or combination of impairments that results in both strength limitations and non-exertional limitations, the rules in Subpart P are considered in determining whether a finding of disabled may be possible based on the strength limitations alone, and if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience, provide the framework for consideration of how much an individual's work capability is further diminished in terms of any type of jobs that would contradict the non-limitations. Full consideration must be given to all relevant facts of a case in accordance with the definitions of each factor to provide adjudicative weight for each factor.

In this case, the evidence reveals that Claimant suffers from depression, severe chronic anxiety disorder, bipolar disorder, ADHD, migraines, hypertension, edema, cellulitis, emphysema, atelectasis and pulmonary embolisms. The objective medical evidence lists no limitations. In light of the foregoing, it is found that the Claimant maintains the residual functional capacity for work activities on a regular and continuing basis which includes the ability to meet the physical and mental demands required to perform at least light work as defined in 20 CFR 416.967(a). After review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 202.20, it is found that Claimant is not disabled for purposes of the MA-P 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 not disabled for purposes of the MA-P, Retro-MA and SDA benefit programs. Accordingly, it is ORDERED:

The Department's determination is AFFIRMED.

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

Date Signed: 2/6/12

Date Mailed: 2/6/12

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