

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-28194
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 24, 2011
County: Tuscola

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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, an in-person hearing was held on August 24, 2011, in Caro, MI. Claimant appeared and testified. Claimant was represented by [REDACTED].

The record was extended to allow the submission of a DHS-49 from Claimant's treating physician. Claimant and/or his representative failed to submit a current DHS-49 from his treating physician. Other records submitted for consideration were sent to SHRT and SHRT subsequently found Claimant not disabled.

ISSUE

Whether the Department properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) program?

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 October 7, 2010, Claimant applied for MA-P and retro MA-P to September 2010.
2. On December 21, 2010, the Medical Review Team denied Claimant's request.
3. On April 1, 2011, Claimant submitted to the Department a request for hearing.

4. The State Hearing and Review Team (SHRT) denied Claimant's request.
5. Claimant is 49 years old.
6. Claimant completed education through high school.
7. Claimant has employment experience (last worked September 2004) in sales and as a cashier.
8. Claimant suffers from depression, anxiety, seizures, degenerative bone disease, chronic back pain, atrophy and damage of left arm/hand and hepatitis.
9. Claimant's limitations have lasted for 12 months or more.
10. Claimant has some limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.
11. Claimant has some limitations on understanding, carrying out, and remembering simple instructions; use of judgment; responding appropriately to supervision, co-workers and usual work situations; and dealing with changes in a routine work setting.

CONCLUSIONS OF LAW

MA-P 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 administers MA-P 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 Manual (RFT).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. 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. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

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 symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

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. 20 CFR 416.945(a).

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.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of 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; 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.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the claimant's residual functional capacity. 20 CFR 404.1520(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, the trier must consider all of the claimant's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the claimant has the residual functional capacity to do his/her past relevant work, then 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 step.

In the fifth step, an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Here, Claimant has satisfied requirements as set forth in steps one, two and three of the sequential evaluation. However, Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Therefore, vocational factors will be considered to determine claimant's residual functional capacity to do relevant work.

In the present case, Claimant has been diagnosed with depression, anxiety, seizures, degenerative bone disease, chronic back pain, atrophy and damage of left arm/hand and hepatitis. Claimant has a number of symptoms and limitations, as cited above, as a result of these conditions. Claimant's treating physician noted on a DHS-49 not dated but listing a last exam date of [REDACTED] that Claimant was normal in all examination areas. This physician indicated that Claimant's condition was stable at that time and failed to indicate if limitations were temporary or lasting longer than 90 days. This physician indicated Claimant only capable of occasionally lifting 10 lbs and standing/walking less than 2 hours in an 8-hour day. No other limitations were noted. On [REDACTED], this same physician completed a new DHS-49 but failed to indicate

the last exam date. On this DHS-49, all general areas of the exam were noted normal except for the following: abdominal area a notation of elevated liver enzymes and gastric bleed, musculoskeletal area notation of left shoulder ROM rotator cuff tear and mental area a notation of depression and alcohol abuse. This physician indicated Claimant's condition was stable at that time and failed to indicate if limitations were temporary or would last longer than 90 days. This physician indicated that Claimant was capable of occasionally lifting 10 lbs and standing/walking at least 2 hours in an 8-hour day. The physician further restricts the use of hands/arms for performing pushing/pulling and fine manipulation in addition to mental limitations on comprehension and sustained concentration. On [REDACTED], this same physician completed a DHS-49 without noting the date of last examination. On this DHS-49, the doctor indicates the following in regards to the general exam areas: abdominal area notation of elevated liver enzymes history of gastric bleed, musculoskeletal area a notation of left shoulder ROM rotator cuff tear and mental area notation of depression and alcohol abuse. This physician indicated that Claimant's condition was stable at that time and failed to indicate if limitations were temporary or would last longer than 90 days. This physician indicated that Claimant was capable of occasionally lifting 10 lbs and standing/walking at least 2 hours in an 8-hour day. The physician further restricts the use of hands/arms for performing pushing/pulling and fine manipulation in addition to mental limitations on comprehension and sustained concentration.

It should be noted the record was extended to allow Claimant and/or his representative to submit an updated DHS-49 from his treating physician. Claimant and/or representative failed to submit this form. Claimant and/or his representative did submit his treating physician's records. According to a [REDACTED], patient record signed by his treating physician, Claimant was capable of mowing his grass and performing yard work if he takes his Vicodin. This record does indicate a pain level of 8 according to Claimant. This record also documents Claimant's abstinence from alcohol for 8 months.

Claimant was hospitalized in [REDACTED], and was seen by a consulting physician who diagnosed Claimant as suffering with major depression, recurrent and comorbid condition- alcohol abuse and dependence. This physician found Claimant had a GAF of 40 to 45. This physician indicated Claimant's overall prognosis as moderate to guarded. He was found psychiatrically stable and discharged.

Claimant submitted for consideration a mental residual functional assessment completed by his physician. This physician completed the form on [REDACTED], noting he had not seen Claimant since [REDACTED]. This physician noted on this form that Claimant was moderately limited in 1 of the 20 areas of consideration; the remainder of the areas of consideration were noted to be either not significantly limited or there was no evidence of limitation. A DHS-49D was also completed by this physician who indicated a GAF of 45 and a diagnosis of alcohol dependence.

Claimant testified to the following symptoms and abilities: pain in lower back, right side lower body pain, limited ability to sit, stand and walk, limited range of motion in left shoulder, limited strength in left arm and hand, can sit 15 minutes before pain in back

and hip, can stand 10 minutes, constant rocking from one leg to another to help reduce pain level in hip and back, can walk 200 feet, grip and grasp okay in right hand, can lift 10 lbs, problems with pain when bending over, poor balance, last drank alcohol in November 2010, limited ability to do household chores, some limitations with bathing, not able to drive, crying spells monthly, anxiety attacks monthly, avoids people and doesn't like going outside of his home. This Administrative Law Judge found Claimant's testimony regarding the degree and severity of his symptoms and limitations to be less than credible.

The fourth step of the analysis to be considered is whether the claimant has the ability to perform work previously performed by the claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the claimant from doing past relevant work. In the present case, Claimant's past employment was in sales and as a cashier. This required Claimant to be on his feet the majority of the work day. This Administrative Law Judge finds, based on the medical evidence and objective, physical, and psychological findings, that Claimant is not capable of the physical or mental activities required to perform any such position. 20 CFR 416.920(e).

In the final step of the analysis, the trier of fact must determine if the claimant's impairment(s) prevent the claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

1. residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and
3. the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite her limitations. 20 CFR 416.966.

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. 20 CFR 416.945(a).

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).

See *Felton v DSS* 161 Mich App 690, 696 (1987). Once the claimant makes it to the final step of the analysis, the claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 732 F2d 962 (6th Cir, 1984). Moving forward, the burden of proof rests with the State to prove by substantial evidence that the claimant has the residual function capacity for SGA.

This Administrative Law Judge finds that Claimant has the residual functional capacity to perform work at no more than a sedentary level. Claimant's records fail to establish a continuing degree of physical or mental limitation which would prevent work on a sedentary level.

Claimant is an individual of younger age. 20 CFR 416.963. Claimant has a high school education. 20 CFR 416.964. Claimant's previous work was unskilled. Federal Rule 20 CFR 404, Subpart P, Appendix 2, contains specific profiles for determining disability based on residual functional capacity and vocational profiles. Using the rule most favorable to Claimant under Table I, Rule 201.18, Claimant is not disabled for purposes of the Medical Assistance program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is not medically disabled.

Accordingly, the Department's decision is hereby UPHeld.



Jonathan W. Owens
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: January 24, 2012

Date Mailed: January 24, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

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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

JWO/pf

cc:

