

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

IN THE MATTER OF:

[REDACTED]

Reg No.: 2011-37785
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: October 3, 2011
Genesee County DHS (02)

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 Clinton Township, Michigan on Thursday, October 13, 2011. The Claimant appeared, along with [REDACTED] and testified. [REDACTED] appeared on behalf of the Department of Human Services ("Department").

During the hearing, the Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical records. The evidence was received, reviewed, and forwarded to the State Hearing Review Team ("SHRT") for consideration. On February 21, 2012, this office received the SHRT determination which found the Claimant not disabled. This matter is now before the undersigned for a final determination.

ISSUE

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

FINDINGS OF FACT

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

1. The Claimant submitted an application for public assistance seeking MA-P and SDA benefits on February 16, 2011.

2. On May 12, 2011, the Medical Review Team (“MRT”) found the Claimant not disabled. (Exhibit 1, pp. 1, 2)
3. On May 17, 2011, the Department notified the Claimant of the MRT determination. (Exhibit 1, pp. 143, 144)
4. On May 23, 2011, the Department received the Claimant’s written request for hearing. (Exhibit 2)
5. On July 5, 2011 and February 7, 2012, the SHRT found the Claimant not disabled. (Exhibit 4)
6. The Claimant alleged physical disabling impairments due to neck pain status post surgery, back pain, scoliosis, leg pain, and carpal tunnel syndrome.
7. The Claimant alleged mental disabling impairment due to depression.
8. At the time of hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth date; was 5’9” in height; and weighed 152 pounds.
9. The Claimant has a limited education with some vocational training and an employment history working at a car wash, as a contractor, and in a shop putting coating on automotive parts.
10. The Claimant’s impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

The Medical Assistance program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services, formerly known as the Family Independence Agency, pursuant to MCL 400.10 *et seq.* and MCL 400.105. Department policies are found in the Bridges Administrative Manual (“BAM”), the Bridges Eligibility Manual (“BEM”), and the Bridges Reference Tables (“RFT”).

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

findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do

basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity, therefore is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting.

Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the

impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, the Claimant alleges disability due to neck pain status post surgery, back pain, scoliosis, leg pain, carpal tunnel syndrome, and depression.

On [REDACTED] the Claimant attended a psychiatric evaluation. The Claimant's judgment and insight were poor and his appearance was disheveled. The diagnosis was bipolar disorder with a Global Assessment Functioning ("GAF") of 44.

On [REDACTED] x-rays found mild curvature of the lumbar spine concave to the left with mild to moderate multi-level disc height loss, most marked at L1-2 without wedge compression fractures. Minimal anterior wedge compression at T12 was also noted.

On [REDACTED] an MRI of the lumbar spine revealed mild multilevel lumbar spine degenerative change most prominent at L1-2 which showed diffuse posterior disc bulge mildly effacing the ventral CSF with mild impingement on the cauda equine nerve roots, producing central canal stenosis.

On [REDACTED] the Claimant sought treatment for his chronic low back pain. The MRI from [REDACTED] showed L1-2 disc collapse with h modic changes with disc herniation with left foraminal stenosis at L1-2, mild right L3-4, and foraminal stenosis at L4-5. The Claimant was referred to the pain clinic for pain injections and physical therapy.

On [REDACTED] a psychiatric evaluation was performed. Symptoms included little interest or pleasure in doing things; feeling down, depressed, or hopeless; sleeping too much; feeling tired or having little energy; poor appetite or over eating; feeling bad about self; trouble concentration; thoughts of being better off dead or of hurting self; anxiety; manic symptoms (impulsivity and mood swings); and short-term memory problems. The diagnosis was bipolar disorder with a GAF of 43.

On [REDACTED] the Claimant presented to the emergency room with increased chronic low back pain with increased tingling to left upper and left lower extremities.

On [REDACTED] the Claimant sought treatment for his back and leg pain. Forward lumbar flexion was less than 25 degrees and extension was 15 degrees, lateral rotation was 20 degrees bilateral. Flexion and extension were painful.

On [REDACTED] the Claimant was referred to physical therapy for an evaluation for a power scooter or power wheelchair. The medical diagnoses were listed as bipolar

disorder, most recent episode depressed, severe with psychotic feature, cocaine abuse, and arthralgia. The Claimant was able to ambulate with a cane. The Claimant was provided a 4-wheeled walker and a TENS unit for his low back pain.

On [REDACTED] the Claimant was treated for left shoulder and low back pain.

On [REDACTED] the Claimant attended a psychiatric evaluation. The diagnoses were history of bipolar disorder, alcohol abuse/dependence, and marijuana abuse/dependence. The GAF was 43.

On [REDACTED] the Claimant received treatment for shortness of breath.

On [REDACTED] the Claimant presented to the hospital after being involved in a motor vehicle accident. CT scans confirmed lumbar and cervical retrolisthesis. The Claimant underwent anterior-posterior fusion and laminectomy at C3-7 without complication. The Claimant was discharged on [REDACTED] with the diagnoses of C3-4 cervical spine retrolisthesis, cervical radiculopathy, and L1-2 retrolisthesis.

On [REDACTED] the Claimant attended a follow-up appointment. The Claimant was able to ambulate with a walker. The diagnoses were spinal cord injury/compression status post C3 to T1 laminectomies with placement of bilateral lateral mass screws from C3-7 followed by posterolateral fusion, and rotator cuff syndrome.

On [REDACTED] the Claimant attended a consultative psychological evaluation. The diagnosis was major depressive disorder, recurrent, mild with a GAF of 60.

On [REDACTED] the Claimant attended a follow-up appointment status post-surgery. The wound had some drainage so the Claimant was treated with antibiotics.

On [REDACTED] the Claimant's primary care doctor issued a disability certificate finding the Claimant totally disabled through November [REDACTED].

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented 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 *de minimus* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged physical and mental disabling impairments due to neck pain status post surgery, back pain, scoliosis, leg pain, carpal tunnel syndrome, and depression.

Listing 1.00 (musculoskeletal system), Listing 4.00 (cardiovascular system), and Listing 12.00 (mental disorders) were considered in light of the objective medical evidence. Based on these records, it is found that the Claimant's impairments do not meet the intent and severity requirement of a listed impairment. Accordingly, the Claimant cannot be found disabled or not disabled at Step 3; therefore, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to

25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity with the demands of past relevant work. *Id.* If an individual can no longer do past relevant work the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty to function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The Claimant's work history includes employment working at a car wash, as a contractor, and in a shop putting coating on automotive parts. In light of the Claimant's testimony and in consideration of the Occupational Code, the Claimant's prior work at a car wash is classified as unskilled light work. The contracting position and shop work are considered semi-skilled medium to heavy work.

The Claimant testified that he can lift/carry about 10 pounds; walk about one block with assistance; stand 10 minutes; sit for one hour; and has difficulty bending and/or squatting. The objective medical evidence establishes the need for a walker, TENS unit, and a disability certificate through [REDACTED]. Mentally, the evidence shows several limitations with the GAF ranging from 43 (treating) to 60 (consultative). 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 the Claimant's testimony and medical records, it is found that the Claimant may not be able to return to past relevant work. Accordingly, Step 5 of the sequential analysis is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, the Claimant was 48 years old thus considered to be a younger individual for MA-P purposes. The Claimant has a limited education. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

In this case, the evidence established that the Claimant suffers with chronic low back pain, knee pain, shoulder pain, and neck pain. The Claimant requires an assistive device for ambulation. The objective medical evidence document several mental and physical limitations. The total impact caused by the combination of physical and mental impairments suffered by the Claimant must be considered. In doing so, it is found that the combination of the Claimant's physical and mental impairments have a major effect on his ability to perform basic work activities. Accordingly, it is found that, at this point, the Claimant is unable to perform the full range of activities necessary for sedentary work as defined in 20 CFR 416.967(a). After review of the entire record, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits

based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, the Claimant is found disabled for purposes of the MA-P program; therefore, he is found disabled for purposes of SDA benefit program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant is disabled for purposes of the MA-P and SDA benefit program.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate processing of the February 16, 2011 application, to include any retroactive months, to determine if all other non-medical criteria are met and inform the Claimant of the determination in accordance with department policy.
3. The Department shall supplement for lost benefits (if any) that the Claimant was entitled to receive if otherwise eligible and qualified.
4. The Department shall review the Claimant's continued eligibility in March 2013 in accordance with department policy.

Colleen M. Mamelka

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

Date Signed: February 28, 2012

Date Mailed: February 28, 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.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CMM/cl

cc:

