

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-1536
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: January 3, 2012
County: Cass

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 January 3, 2012 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED] (Eligibility Specialist) and [REDACTED] (Assistance Payments Supervisor).

ISSUE

Did the Department of Human Services (the Department) properly deny 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 July 28, 2011, Claimant filed an application for Medical Assistance, retro MA and State Disability Assistance benefits alleging disability.
2. On September 7, 2011, the Medical Review Team (MRT) approved Claimant for SDA but denied Claimant's application for MA-P and retro MA-P due to lack of duration of at least 12 months.
3. On September 12, 2011, the Department caseworker sent Claimant notice that his application was denied.
4. On September 15, 2011, Claimant filed a request for a hearing to contest the Department's action.

5. On November 15, 2011, the State Hearing Review Team (SHRT) denied Claimant's application for MA-P and retro MA-P.
6. On December 9, 2011, the State Hearing Review Team (SHRT) denied Claimant's application for MA, retro MA and SDA stating that he was capable of performing other work for purposes of MA and that he did not meet the 90 day duration requirement for SDA.
7. A telephone hearing was held on January 3, 2012. The Administrative Law Judge held the record open to allow for Claimant's medical records from [REDACTED] to be submitted. Claimant consented and agreed to extend the deadlines.
8. The [REDACTED] were received and forwarded to the SHRT on or about March 30, 2012.
9. On May 7, 2012, the SHRT again denied Claimant's application for MA-P, retro MA-P and SDA because "[t]he medical evidence of record indicates that the claimant retains the capacity to perform medium exertional tasks. There is no evidence of psychiatric limitations."
10. In the instant matter, Claimant alleges disabling impairments due to degenerative joint disease, arthritis, right wrist injury and pain, history of fractured hand and foot, chronic obstructive pulmonary disease (COPD), chronic low back pain, bilateral shoulder bursitis, hypertension, depression and substance abuse.
11. At the time of the hearing, Claimant was 48 (forty-eight) years old with a birth date of [REDACTED]; was 6' (six) feet; and weighed 170 (one hundred seventy) pounds (lbs).
12. Claimant has a 9th (ninth) grade education but he does not read and write very well. Claimant had a semi-skilled employment history as maintenance worker and/or a machine operator.

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 Program Reference Manual (PRM).

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 MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the MA 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

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. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only the claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

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). Statements about pain or other symptoms do not alone establish disability. 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.

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).

The law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful activity can be achieved, a finding of not disabled must be rendered.

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).

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 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.

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 or 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 or

she is not disabled regardless of how severe his or her physical or mental impairments are and regardless of his or 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 or she is not disabled.

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, App. 1, 12.00(C). First, an individual's pertinent symptoms, signs and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1). When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2). Functional limitations are assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively and on a sustained basis. 20 CFR 416.920(a)(2). Chronic mental disorders, structured settings, medication and other treatment, and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(4).

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). 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 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).

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 or 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 (fifteen) years or 15 (fifteen) 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 or 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 or her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he or she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he or she is disabled.

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. The terms are defined as follows:

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).

The analysis begins at Step 1. Here, Claimant is not engaged in substantial gainful activity and has not worked since 2009. Therefore, Claimant is not disqualified from receiving disability at Step 1. Therefore, Claimant is not disqualified from receiving disability at Step 1 and the analysis proceeds to Step 2.

At Step 2, Claimant's symptoms are evaluated to see there is an underlying medically determinable physical or mental impairment(s) that could reasonably be expected to produce the claimant's pain or other symptoms. This must be shown by medically

acceptable clinical and laboratory diagnostic techniques. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of the claimant's symptoms to determine the extent to which they limit the 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.

In the present case, the claimant alleges disability due to degenerative joint disease, arthritis, right wrist injury and pain, history of fractured hand and foot, chronic obstructive pulmonary disease (COPD), chronic low back pain, bilateral shoulder bursitis, hypertension, depression and substance abuse.

There were very few medical records provided in this case. Many of Claimant's medical records were from 2009 or earlier. There were only a few records from 2011-2012. The earliest medical records showed that Claimant had a left inguinal hernia repair in 1994. The records also contained a DHS-49 form dated August 8, 1994 which revealed degenerative joint disease, right hand and back pain.

On April 6, 1998, Claimant had been diagnosed with a left inguinal hernia. He had a herniorrhaphy (hernia surgery) on or about April 16, 1998. After complaints of rectal bleeding, Claimant visited his physician on November 18, 1999. Claimant was hospitalized and admitted for testing. His test results showed that he had no helicobacter.

On December 3, 1999, Claimant had a sigmoidoscopy in this office. The result was normal but he was instructed to have a CBC, PSA and a CEA in six months. On January 27, 2000, Claimant visited his doctor after he had been feeling ill. The treating physician noted that Claimant had acute bronchitis and a perianal rash. He was given a Z-pack and Elixir Neldecon.

On May 17, 2001, Claimant's medical records revealed that he tested positive for marijuana at work. He was suspended from work and entered addiction treatment for 90 days.

On May 31, 2002, Claimant visited his doctor for a groin rash and for restless legs. Claimant was diagnosed with mycosis of the groin (aka "jock itch"). He was given Mycolog cream and Quinam for his leg cramps then discharged. The medical notes from this visit indicate that Claimant stated he had stopped smoking since January, 2002, but that he continued to use marijuana (1 joint/week).

On July 22, 2002, Claimant was diagnosed with a fractured cuboid bone of his left foot. He was placed in a short cast with a walking heel.

Claimant visited the [REDACTED] on August 31, 2005 for intermittent chest pain. Although Claimant's chest pain was initially considered to be "non-cardiac" in nature, Claimant was admitted for testing and observation. Claimant's cardiac testing was normal. Claimant was diagnosed with chest pain (cause undetermined), shortness of breath (probably early COPD), work-related stress, status post (s/p) collapsed lung in 2001, s/p bilateral inguinal hernia repair, probable depression and alcoholism.

Claimant had some blood lab work done on February 22, 2006 which yielded a high Neutrophils count (8.0). Claimant's Glucose was at 103, which was high (normal range 70-99).

Claimant's blood lab results from July 20, 2007 demonstrated a high white blood count (12.7) where the normal range was 4.5 to 11.0. Claimant's neutrophils count was elevated (10.4) with a normal range of 1.8 to 7.7. His Sodium was low at 136 and his Potassium was 3.3 which were also low. In addition, Claimant's A/G Ratio, AST (SGOT), and Alkaline (Phos) were all low.

Claimant had a lumbosacral x-ray dated July 3, 2008 for low back pain. This x-ray showed that Claimant had mild to moderate degenerative disc disease from L1 through S1.

On February 23, 2012, Claimant had a pulmonary function test at Great Lakes Medical Evaluations. The Pulmonary Function Report showed that Claimant, before bronchodilators, at Test 1, had a forced vital capacity (FVC) of 3.4 and his forced expiratory volume at 1 second (FEV1) was 2.5. At test 2, Claimant's FVC = 3.4; FEV1=2.4. Test 3 was FVC=3.4; FEV1=2.5. Test 4 was FVC=3.4; FEV1=2.5. Test 5 was FVC=2.5; FEV1=2.4. Post bronchodilator, Claimant had the following results: Test 1: FVC=3.1; FEV1=2.6. Test 2: FVC=3.5; FEV1=2.6. Test 3: FVC=3.5; FEV1=2.6. Test 4: FVC=3.1; FEV1=2.4. Test 5: FVC=3.4; FEV1=2.6.

On January 19, 2012, Claimant underwent a comprehensive medical examination by [REDACTED] at [REDACTED]. The exam report indicated that Claimant had full range of motion in all extremities but he did have only 80 degrees flexion on the dorsolumbar spine. Neurologically, Claimant's strength was decreased in the bilateral lower extremities.

Claimant has presented medical evidence that demonstrates he has some physical limitations on his ability to perform basic work activities. The only records to show any limitations consist of his lower back (degenerative disc disease). However, the records do not show that he had any other medical or mental conditions that would surpass Step 2. This means that the medical evidence in this record was insufficient to support that Claimant has a disability related to a right wrist injury/pain, history of fractured hand and foot, chronic obstructive pulmonary disease (COPD), bilateral shoulder bursitis, hypertension, depression and substance abuse. Accordingly, the medical evidence has established that Claimant has an impairment that has more than a *de minimus* effect on

his basic work activities. Further, the impairment has lasted continuously for 12 (twelve) months; therefore, Claimant is not disqualified from receiving MA-P benefits at Step 2.

The analysis proceeds to Step 3 where the medical evidence of Claimant's condition is compared to the listings. In light of the medical evidence, listings 1.01, 1.02, 1.03, 3.02, 4.04, 12.04 and 12.09 are considered. The appropriate listing is contained below:

1.01 Category of Impairments, Musculoskeletal

1.02 *Major dysfunction of a joint(s) (due to any cause)*: Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;

Or

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

1.03 *Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint*, with inability to ambulate effectively, as defined in 1.00B2b, and return to effective ambulation did not occur, or is not expected to occur, within 12 months of onset.

1.04 *Disorders of the spine* (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, and vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

Or

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by

severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

Or

- C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

* * *

3.02 Chronic pulmonary insufficiency

- A. Chronic obstructive pulmonary disease due to any cause, with the FEV1 equal to or less than the values specified in table I corresponding to the person's height without shoes. (In cases of marked spinal deformity, see 3.00E.). For persons 72 inches or more, that person must have an FEV1 of 1.65 or less.

Ischemic heart disease, with symptoms due to myocardial ischemia, as described in 4.00E3-4.00E7, while on a regimen of prescribed treatment (see 4.00B3 if there is no regimen of prescribed treatment), with one of the following:

- B. Sign- or symptom-limited exercise tolerance test demonstrating at least one of the following manifestations at a workload equivalent to 5 METs or less:
 - 1. Horizontal or downsloping depression, in the absence of digitalis glycoside treatment or hypokalemia, of the ST segment of at least -0.10 millivolts (-1.0mm) in at least 3 consecutive complexes that are on a level baseline in any lead other than a VR, and depression of at least -0.10 millivolts lasting for at least 1 minute of recovery; or
 - 2. At least 0.1 millivolt (1 mm) ST elevation above resting baseline in non-infarct leads during both exercise and 1 or more minutes of recovery; or
 - 3. Decrease of 10 mm Hg or more in systolic pressure below the baseline blood pressure or the preceding systolic pressure measured during exercise (see 4.00E9e) due to left ventricular dysfunction, despite an increase in workload;
Or
 - 4. Documented ischemia at an exercise level equivalent to 5 METs or less on appropriate medically acceptable imaging, such as radionuclide perfusion scans or stress echocardiography.

Or

- B. Three separate ischemic episodes, each requiring revascularization or not amenable to revascularization (see 4.00E9f), within a consecutive 12-month period (see 4.00A3e).

Or

- C. Coronary artery disease, demonstrated by angiography (obtained independent of Social Security disability evaluation) or other appropriate medically acceptable imaging, and in the absence of a timely exercise tolerance test or a timely normal drug-induced stress test, an MC, preferably one experienced in the care of patients with cardiovascular disease, has concluded that performance of exercise tolerance testing would present a significant risk to the individual, with both 1 and 2:

- 1. Angiographic evidence showing:

- A. 50 percent or more narrowing of a nonbypassed left main coronary artery; or
- B. 70 percent or more narrowing of another non-bypassed coronary artery; or
- C. 50 percent or more narrowing involving a long (greater than 1 cm) segment of a non-bypassed coronary artery; or
- D. 50 percent or more narrowing of at least two non-bypassed coronary arteries; or
- E. 70 percent or more narrowing of a bypass graft vessel; and

- 2. Resulting in very serious limitations in the ability to independently initiate, sustain, or complete activities of daily living.

* * *

- 12.04 Affective disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders are met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

- A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:
 - A. Anhedonia or pervasive loss of interest in almost all activities; or
 - B. Appetite disturbance with change in weight; or
 - C. Sleep disturbance; or
 - D. Psychomotor agitation or retardation; or
 - E. Decreased energy; or
 - F. Feelings of guilt or worthlessness; or
 - G. Difficulty concentrating or thinking; or
 - H. Thoughts of suicide; or
 - I. Hallucinations, delusions, or paranoid thinking; or

 2. Manic syndrome characterized by at least three of the following:
 - A. Hyperactivity; or
 - B. Pressure of speech; or
 - C. Flight of ideas; or
 - C. Inflated self-esteem; or
 - E. Decreased need for sleep; or
 - F. Easy distractibility; or
 - G. Involvement in activities that have a high probability of painful consequences which are not recognized; or

 - H. Hallucinations, delusions or paranoid thinking; or

 3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);
AND
- B. Resulting in at least two of the following:
1. Marked restriction of activities of daily living; or
 2. Marked difficulties in maintaining social functioning; or
 3. Marked difficulties in maintaining concentration, persistence, or pace; or
 4. Repeated episodes of decompensation, each of extended duration;
- Or
- C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:
1. Repeated episodes of decompensation, each of extended duration; or

2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate;
or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

* * *

12.09 Substance addiction disorders: Behavioral changes or physical changes associated with the regular use of substances that affect the central nervous system.

The required level of severity for these disorders is met when the requirements in any of the following (A through I) are satisfied.

- A. Organic mental disorders. Evaluate under 12.02.
- B. Depressive syndrome. Evaluate under 12.04.
- C. Anxiety disorders. Evaluate under 12.06.
- D. Personality disorders. Evaluate under 12.08.
- E. Peripheral neuropathies. Evaluate under 11.14.
- F. Liver damage. Evaluate under 5.05.
- G. Gastritis. Evaluate under 5.00.
- H. Pancreatitis. Evaluate under 5.08.
- I. Seizures. Evaluate under 11.02 or 11.03.

Claimant's alleged disabilities are not supported by the objective medical evidence. Even if one were to find that the record is sufficient, the record does not meet any of the listings set forth above. Ultimately, it is found that Claimant's alleged impairments do not meet the intent and severity requirement of a listed impairment and, therefore, Claimant can not be found disabled at Step 3.

The Administrative Law Judge also finds that Claimant would not be able to survive Step 5 which concerns whether or not Claimant has the residual functional capacity to perform some other jobs in the national economy. Here, Claimant would be able to perform sedentary jobs or even light work duties. This Administrative Law Judge finds that the objective medical evidence on the record fails to show that Claimant has no residual functional capacity. Consequently, Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light to sedentary work even with his impairments.

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969. Under

the Medical-Vocational guidelines, a younger individual (age 48), with limited or less education and a semi-skilled work history who is capable of light work is not considered disabled pursuant to Vocational Rule 202.18.

Claimant has not satisfied the burden of proof to show by competent, material and substantial evidence that he 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). Although Claimant has cited medical problems, the objective clinical documentation submitted by Claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate Claimant's assertion that his alleged impairment(s) are severe enough to reach the criteria and definition of disability. Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

With regard to Claimant's request for disability under the State Disability Assistance (SDA) program, it should be noted that the Department's Bridges Eligibility Manual (BEM) contains policy statements and instructions for caseworkers regarding the SDA program. In order to receive SDA, "a person must be disabled, caring for a disabled person or age 65 or older." BEM, Item 261, p. 1. Because Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not show that Claimant is unable to work for a period exceeding 90 (ninety) days, Claimant is also not disabled for purposes of the SDA program.

The Department has established by the necessary competent, material and substantial evidence on the record that it acted in compliance with Department policy when it determined that Claimant was not eligible to receive Medical Assistance, Retro Medical Assistance and State Disability 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 acted in compliance with Department policy when it denied Claimant's application for Medical Assistance, Retroactive Medical Assistance and State Disability Assistance. Claimant should be able to perform a wide range of light work even with his impairments. The Department has established its case by a preponderance of the evidence.

Accordingly, the Department's decision is AFFIRMED.

IT IS SO ORDERED.

/s/

C. Adam Purnell
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 6/27/12

Date Mailed: 6/28/12

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.

CAP/ds

■ [REDACTED]