

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

IN THE MATTER OF:

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Reg No.: 2012-20016
Issue No.: 2009
Case No.: ██████████
Hearing Date: January 16, 2013
Oakland County DHS (04)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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, an in-person hearing was held in Pontiac, Michigan on January 16, 2013. The Claimant appeared, along with a witness, ██████████ Case Manager for Training and Treatment Innovations. The Claimant was represented by ██████████ ██████████ ██████████ Participating on behalf of the Department of Human Services ("Department") was ██████████, ES.

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 June 13, 2013, this office received the SHRT determination dated June 5, 2013 which found the Claimant not disabled. This matter is now before the undersigned for a final decision.

ISSUE

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

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 benefits, retroactive to May 2011, on June 10, 2011.

2. On November 8, 2012, the Medical Review Team (“MRT”) found the Claimant not disabled.
3. The Department notified the Claimant of the MRT determination on November 14, 2012.
4. On December 6, 2011 the Department received the Claimant’s timely written request for hearing.
5. On April 16, 2012 and June 5, 2013, the SHRT found the Claimant not disabled. (Exhibit 2)
6. The Claimant alleged physical disabling impairments due do heart problems, back and neck pain, glaucoma, hypertension and liver problems.
7. The Claimant has alleged a mental disabling impairment(s) of depression.
8. At the time of hearing, the Claimant was ■ years old with a ■ birth date, the Claimant is now 51. The Claimant’s height was 5’11” in height; and weighed approximately 265 pounds.
9. The Claimant completed a GED and took classes and received a certificate as an electronics technician. The Claimant has an employment history of repairing electronics and worked as an apprentice, doing wiring of residential and commercial buildings. The Claimant worked in a food service warehouse rotating food and preparing shipments and receiving products. The Claimant was also self-employed repairing faxes, dictaphone and transcription equipment, and also repair of medical equipment for another company.
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 416.913. 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 416.945(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 and, 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 416.920(a)(4)(ii); 20 CFR 416.920(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 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(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*

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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 heart problems, back and neck pain, glaucoma, hypertension and liver problems. The Claimant alleges mental disabling impairments due to depression. A summary of the medical evidence presented follows.

A Psychiatric Examination Report was completed on [REDACTED] by the Claimant's treating psychiatrist whom he has seen since [REDACTED]. The examiner noted that Claimant is currently being treated for substance abuse (alcohol). Mental health chronic major depression and Substance abuse (alcohol) were the primary and secondary diagnoses. The examiner noted that Claimant becomes easily agitated when a barrier presents itself such as finding employment and then becoming frustrated that he cannot do the work or find work. The Claimant lost his last electronics repair job because he was not catching on. This frustration leads to conflict with relationships, eventual self-harming thoughts and alcohol use. Strong therapeutic interventions have helped avoid psychiatric hospitalization. The GAF score was 46 with prior year GAF score of 52.

A mental residual functional capacity assessment was also conducted on January 18, 2013. The Claimant was evaluated as markedly limited in Sustained Concentration and Persistence, in the ability to work in coordination with or proximity to others without being distracted, ability to make simple work-related decisions and ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and perform at consistent pace without an unreasonable number and length of rest periods. Under social interaction the Claimant was markedly limited in ability to accept instructions and respond appropriately to criticism from supervisors, and ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes. The Claimant was found markedly limited in Adaption, for his ability to respond appropriately to change in the work setting and ability to set realistic goals or make plans independently.

A consultative Medical Exam was conducted on [REDACTED]. The examiner noted right upper extremity was weak and straight leg raising was positive bilaterally. On examination the following limitations were imposed. The Claimant could frequently lift less than 10 pounds and occasionally lift 10 pounds, the Claimant could stand or walk less than 2 hours in an 8 hour work day, no limitations were imposed on sitting, the Claimant was limited in the use of his right hand with pushing and pulling and fine manipulation, and the Claimant could not operate foot controls, leg controls with his left foot/leg. Assistive devices were not deemed necessary. At the exam the Claimant

advised the examiner that he had quit drinking 2 months ago. The Clinical exam revealed muscle spasms in neck area with painful range of motion. Left lower back reveals muscle spasm in lower back with painful range of motion. Straight leg raising test was positive on left side about 30 to 40 degrees and right side about 40 to 50 degrees. Decreased grip strength noted on right side compared to left. Positive neurological finding was that patient has definitive right upper extremity weakness compared to left. There was very poor two point discrimination of the left side compared to the right side. X-rays of lumbar and cervical spine show significant degenerative joint disease in the C-spine and L-spine.

The Assessment was as follows. Right upper extremity weakness secondary to cervical radiculopathy. Lumbar radiculopathy with left lower extremity tingling and numbness. Glaucoma, uncontrolled high blood pressure, hyperlipidemia, depression and tobaccoism and history of alcoholism. A radiological report was attached which indicated degenerative arthritis of lumbar spine and cervical spine.

The Claimant's treating psychiatrist also indicated in a separate letter dated [REDACTED] [REDACTED] verifying Claimant's current diagnosis and symptoms gave a diagnosis of Major Depressive Disorder, Recurrent. He has a history of attempting suicide and most recently was experiencing suicidal thoughts in [REDACTED]. The Claimant experiences symptoms of depression which leads to lack of motivation, increased anger and self-defeating behaviors. When Claimant experiences symptoms of depression, he has a difficult time looking for work and attending to his daily routine. Currently the Claimant's medication has not effectively relieved his symptoms of depression.

The Claimant was admitted for a several day stay on [REDACTED] with a referral by his primary care physician complaining of bilateral lower extremity swelling for 3 to 4 weeks associated with more than 15 pounds weight gain, abdominal distention and swelling. Also left shoulder pain radiating to the left chest, and left upper extremity. Claimant admitted to drinking every day and depression and diabetes was noted. During his stay Claimant had a left heart catheterization. The catheterization showed mild or moderate coronary artery disease. Client was offered an MRI of cervical spine but decided to follow up with his primary care physician for evaluation of cervical disc disease. Patient was also advised on alcohol cessation and referral to AA. During the catheterization the ejection fraction was 65% of the left ventricle and was noted as normal. The operative report showed minimal disease of left main artery, moderate disease of left anterior descending artery, mild disease of the circumflex, mild disease of the right coronary artery and mild aortic stenosis of the aortic valve. An x-ray of the cervical spine notes degenerative changes most pronounced at C4-C5, C5-C6 and C6-C7. The prevertebral soft tissues are within normal limits and neural foramina narrowing is noted in the mid cervical spine with MRI with radiculopathy protocol. The final assessment on discharge noted chronic obstructive pulmonary disease, probable emphysema, pulmonary hypertension, no ST elevated myocardial infarction with possible left ventricular

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dysfunction, alcohol with associated liver disease, back and neck pain with left upper extremity radiculopathy suspect disc herniation and hypertension.

The Claimant was seen for groin swelling post heart catheterization on May 16, 2011. The Claimant was discharged and advised to see his primary care physician and have an ultrasound. Swelling was noted in both lower extremities, 3+.

A psychiatric examination was performed on [REDACTED] by the Claimant's treating psychiatrist. The GAF score was 50 and diagnosis was major depression and alcohol dependence. At that time a mental residual functional capacity exam was performed indicating marked limitations for sustained concentration and persistence in Claimant's ability to perform activities within a schedule, maintain regular attendance and be punctual within customary tolerances, and ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. As regards social interaction the Claimant was markedly limited in his ability to accept instructions and respond appropriately to criticism from supervisors and ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes. The evaluation of Claimant's adaption was markedly limited in ability to respond appropriately to changes in the work setting, and set realistic goals or make plans independently.

The Claimant visited emergency room outpatient for detox on [REDACTED]. The impression diagnosis was depression, suicidal risk and acute alcoholic intoxication. The admit notes the Claimant had attempted suicide by hanging the year previous. The Claimant was admitted and seen by a psych consult. The diagnosis was alcohol abuse and dependency, possible systemic disorder underlying his alcohol abuse, or possible substance induced depression as a result of use of alcohol. Mixed personality disorder likely and GAF of 40-45. The Claimant was discharged home with medications and examiner felt alcohol abuse is the prominent symptom.

The Claimant was diagnosed with glaucoma in [REDACTED] with impression of chronic open angle glaucoma right eye, and trabeculectomy, right eye to relieve fluids associated with glaucoma. The Claimant did not use his medications due to lack of medical insurance.

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 some medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. Mentally, the degree of functional limitation of the Claimant's activities, social function, concentration, persistence, or pace, is marked in several pertinent and important areas. The medical evidence has established that the 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, 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 evidence confirms treatment/diagnoses of chronic depression, left with mild or moderate coronary artery disease, and degenerative cervical disc disease with foraminal narrowing mid cervical spine heart catheterization.

Listing 1.00 (musculoskeletal system), Listing 4.00 (cardiovascular system) were not met, however Listing 12.04 Affective Disorders, depression requires further analysis.

Listing 12.04 defines affective disorders as being characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Generally, affective disorders involve either depression or elation. The required level of severity for these disorders is met when the requirements of 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

AND

B. Resulting in at least two of the following:

1. Marked restriction on 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;

In this case, the record reveals the Claimant has treated for his chronic depression since 2009 and the medical evidence available does indicate consistent treatment and diagnosis of chronic depression. Examining 12.04 requirements in Section (A) the Claimant clinically exhibited difficulty concentrating or thinking, has attempted suicide by hanging and suffers from feelings of guilt or worthlessness as evidenced by the treating physician's examination and evaluation. The two mental residual functional capacity evaluations by the Claimant's treating doctor markedly limit the Claimant in the same categories with the most recent exam adding some additional limitations. The Claimant does have a GAF score of 46 which is low. The mental residual functional capacity evaluations satisfy the requirements of 12.04 A and B 2, and 3. At the hearing the Claimant credibly testified that he does have crying spells every day, and one month prior to the hearing he took pills in another suicide attempt. The Claimant could not remember appointments. Overall, it is determined that the listing for depression was met. Ultimately, based on the medical evidence, and the testimony of the Claimant, the Claimant's impairment(s) meet, or meet the medical equivalent of, a listed impairment within 12.00, specifically 12.04. Accordingly, the Claimant is found disabled at Step 3.

Because the evidence confirms the Claimant's severe and chronic alcohol dependence, a determination of whether the dependence/abuse is a contributing factor material to the finding of disability must be made. 20 CFR 416.935(a). A key factor in making this determination is whether the Claimant would still be found disabled if the Claimant stopped drinking. 20 CFR 416.935(b)(1). As detailed above, the evidence does contain physical and/or mental limitations. In removing the conditions associated with the Claimant's alcohol consumption, the remaining treatment/diagnoses chronic major depression and limitations due to degenerative conditions in the cervical spine. The notes from the consultative examination indicate that at that time in [REDACTED] the Claimant had stopped drinking. As the depression condition is severe and/or disabling and several suicide attempts have been made coupled with the marked restrictions consistently imposed on the Claimant, it does not appear that the Claimant's depression would significantly improve or cease if alcohol use were stopped. Accordingly, it is found that the Claimant's continued alcohol dependence is not a material contributing factor material to the determination of disability. 20 CFR 416.935(b)(2)(i). In light of the foregoing, the Claimant is found disabled.

DECISION AND ORDER

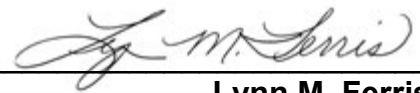
The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant not disabled for purposes of the MA-P benefit program.

Accordingly, It is ORDERED:

The Department's determination is REVERSED.

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1. The Department shall begin processing the Claimant's June 10, 2011 application and any applicable retro months, May 2011, for Medical Assistance and determine whether the other non-financial eligibility criteria have been met and inform the Claimant and his Authorized Hearing Representative of the determination in accordance with Department policy.
2. The Department shall review the Claimant's continued eligibility in July of 2014 in accordance with Department policy.



Lynn M. Ferris
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: July 3, 2013

Date Mailed: July 3, 2013

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:

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- 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

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cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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