STATE OF MICHIGAN MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ADMINISTRATIVE HEARINGS FOR THE DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:	

Reg No.: 2012-34027

Issue No.: 2009

Case No.:

Hearing Date: May 14, 2012 Macomb County DHS (12)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administ rative 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 Townsh ip, Michigan on Monday, May 14, 2012. The Claima nt appeared, along with and testified. The Claimant was represented by Participating on behalf of the Department of Human Services ("Department") was

During the hearing, the Claimant waived the time period for the issuance of this decision, in order to allow for the submis sion of additi onal medical evidence. The records were received, reviewed, and forw arded to the State Hearing Review Team ('SHRT") for consideration. On July 12, 2012, this office received the SHR T determination which found the Cla imant not disabled. This matter is now before the undersigned for a final decision.

<u>ISSUE</u>

Whether the Department proper ly 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 t he competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Claimant submitt ed an application for public assistance seeking MA-P benefits on August 31, 2011, retroactive to May 2011.

- 2. On November 9, 2011, the Medical Re view Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 43, 44)
- 3. The Department notified the Claimant of the MRT determination on Nov ember 17, 2011. (Exhibit 2)
- 4. On February 6, 2012, the Department received the Claimant's written request for hearing. (Exhibit 3)
- 5. On March 29 th and J une 29, 2012, the SHRT f ound the Claimant not disabled. (Exhibit 4)
- 6. The Claimant alleged physical disab ling impairments due to seizure disorder, chronic obstructive pulmonary disease ("COPD"), and high blood pressure.
- 7. The Claimant has not alleged any mental disabling impairment(s).
- 8. At the time of hearing, the Claimant was years old with a birth date; was 5'7" in height; and weighed 135 pounds.
- 9. The Claim ant has a limit ed education with some vocational training wit han employment history as a tow truck driver.
- 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 Bridge's Administrative Manual ("BAM"), the Bridges Elig ibility 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 im pairment 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 ac tivities or ability to reason and make

appropriate mental adjustments, if a mental disab ility is alleged. 20 CFR 416 .913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disab ility. 20 CF R 416.908; 2 0 CFR 4 16.929(a). Similarly, conclusor y 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/du ration/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 cons ider an individual's current work activit y; 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 det ermine whether an individual can perform past relev ant work; and residual functional capacity along with vocational factors (i .e. age, education, and work experienc e) 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 disable ed, or not disabled, at 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 indi vidual'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 f unctional capacity is the most an indiv idual can do despite the limitations based on all rele vant evidence. 20 CFR 416.945(a)(1). An individual's residual functional capacity ass essment is ev aluated at both steps four and five. 20 CFR 41 6.920(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. general, the indiv idual has the responsibility to prove 20 CFR 416.994(b)(1)(iv). In disability. 20 CFR 4 16.912(a). An impair ment or combi nation of impairments is not severe if it does not signific antly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The in dividual 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 i ndividual'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.

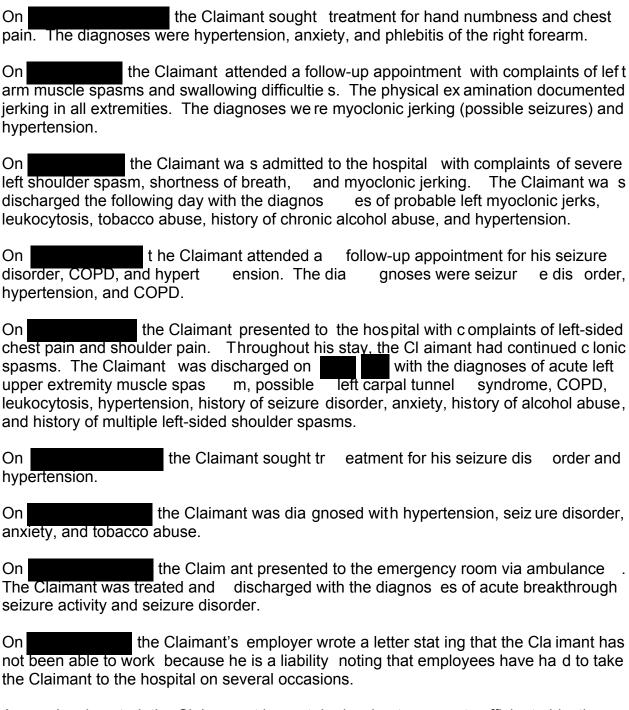
The severity of the Claimant 's alleged impairment(s) is considered under St ep 2. The Claimant bears the burden to pr esent sufficient objective medical evidenc et o substantiate the alleged disa bling impairments. In order to be considered disabled for MA purpos es, the impairment must be se vere. 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 wa lking, 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.

ld.

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 admin istrative 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 di sability due to seizure disorder, COPD, and high blood pressure.



As previously noted, the Claim ant 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 and mental limitations on his ability to perform basic work activities.

The medic al evidence has establis hed 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 continuous ly for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the seque ntial an alysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or co mbination of impairm ents, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged physic al disabling impairments due to seizure disorder, COPD, and high blood pressure.

Listing 3.00 (respiratory system), Listing 4. 00 (cardiovascular system), Listing 11.00 (neurological), and Listing 12.00 (mental disorders) were considered in light of the objective findings. There was no evidence of serious, ongoing symptoms/treatment for any respiratory or cardiac impairment despite prescribed treatment. Based on the evidence, and as observed during the hearing, the Claimant, who has been diagnosed with a seiz ure disorder, experiences involuntary jerking movements. In review of the record, the evidence does not meet the intent and severity requirement necessary to meet a seizure disorder listing within Listing 11.00. 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).

Before considering the fourth step in the sequential analysis, a determination of the individual's residual functional capacity ("RFC") is made. 20 CFR 416.945. An individual's RFC is the most he/she canstill do on a sustained bas is despite the limitations from the impairment(s). *Id.* The total limiting effects of all the impairments, to include those that are not severe, are considered. 20 CFR 416.945(e).

To determine the physical demands (exertional requirements) of work in the national economy, jobs are c lassified as sedentary, light, medium, heavy, and very heavy. 2 0 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 r equired 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 invo Ives sit ting 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. A n 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 li fting or carrying of objects weighing up t o 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 object is 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, walk ing, lifting, carrying, pushing, or pulling) are consider ed nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparis on of the individual's residual functional c apacity with the demands of past relevant work. an individual can no longer do past relevant work the same residual functional capacity assessment along with an individual's a ge, 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 so me physical feature(s) of certain work settings (i.e. ca n't tolerate dust or fumes); or di fficulty performing the manipulative or postural functions of some work such as reaching, hand ling, 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 bas ed upon the principles in the appropriate sections of the regulations, giving consideration to the rules fo r specific case situat ions in Appendix 2. ld.

In this case, the Claimant alleged disabi
lity based on COPD, hypertension, seizure disorder, and involunt ary jerking movements. The Claimant testified that he is able to walk less than one block; grip /grasp with s ome difficulties due to numbness ; sit for 2 hours; lift/carry less than 10 pounds; stand for less than 2 hours; and is able to bend but unable to squat. The objective medical evidence does not contain any limitations. After review of the entire record and considering t he Claimant's testimony, it is found, at this point, that the Claimant maintains the residual functional capac ity to perform at least unskilled sedentary work as defined by 20 CFR 416.967(a).

The fourth step in analyzing a dis ability claim requires an assessment of the Claimant's residual f unctional capacity ("RFC") and pas t relevant employment. 20 CF R 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 lear n the position. 20 CFR 416.960(b)(1). Vocational fact ors 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).

The Claimant's prior em ployment was as a tow truc k driver. In consideration of the Claimant's testimony and Occupat ional Code, the prior employment is classified as semi-skilled medium to heavy work. If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and dis ability does not exist. 20 CFR 416.920. As noted above, the objective evidence does not contain any ph ysical restrictions t hat would preclude employment; howev er it is reasonable to conclude that due to the Claimant's documented seizure disorder along with the employer's letter and current RFC, that the Claimant is unable to perform past relevant work. Acc ordingly, the Claimant cannot be found disabled, or not disabled, at Step 4.

In Step 5, an asses sment of the Claimant's residual functional capacity and age, education, and work experience is consider ed to determine whet her an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, the Claimant years old and, thus, considered to be a younger individual for MA-P purposes. The Claimant has a limited education with voca tional training. Disab ility is found if a n individual is unable to adjust to other work. *Id.* At this point in the analysis, t he burden shifts from the Claimant to the Department to pr esent proof that the Claimant has the residual capacity to substantial gainful employment. 20 CF R 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 individua I has the vocational qualifications to perform specific job s 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 nation al 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 objective findings reveal that the Claimant has COPD, hy pertension, involuntary body jerks, and seiz ure disorder. The Claimant testified that he was able to perform some physical activity comparable to sedentary activity with some limitations. In light of the foregoing, it is found that the Claimant maintains the residual functional capacity for work activities on a regular and continuing basis to meet the physical and mental demands required to perform at I east sedentary work as defined in 20 CF R

416.967(a). After review of the entire record and in consideration of the Claimant's age, education, work experience, RFC, and usi ng the Medical-Voc ational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Ru le 201.10, the Claimant is found disabled at Step 5.

DECISION AND ORDER

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

Accordingly, it is ORDERED:

- 1. The Department's determination is REVERSED.
- 2. The shall initiate processing of the August 31, 2011 MA-P application, retroactive to May 2011, to determine if all non-medical criteria are met and inform the Claimant and his Authorized Hearing Represent ative of the determination in accordance with Department policy.
- 3. The Department shall supplement for lo st benefits (if any) that the Claimant was entitled to receiv e if otherwise elig ible and qualified in acc ordance with Department policy.
- 4. The Dep artment shall review the Cla imant's continue d elig ibility in Augus t 2013 in accordance with Department policy.

Colleen M. Mamuka

Colleen M. Mamelka

Administrative Law Judge

For Maura Corrigan, Director

Department of Human Services

Date Signed: July 25, 2012

Date Mailed: July 25, 2012

NOTICE: Michigan Administrative Hearing Syst em (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a par ty within 30 days of the mailing date of this Dec ision and Order. MAHS will not order a rehearing or

reconsideration on the Department's mo tion where the final decis ion 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 ti mely 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 <u>MAY</u> 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

Re consideration/Rehearing Request

P. O. Box 30639

Lansing, Michigan 48909-07322

CMM/cl

cc: