

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-45973
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 27, 2012
County: Macomb (50-12)

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, an in-person hearing was held on June 27, 2012, from Clinton Township, Michigan. Participants on behalf of Claimant included Claimant and [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

The record was extended to allow additional relevant medical evidence to be submitted. Claimant waived timeliness. The additional medical evidence was received and submitted to the State Hearing Review Team (SHRT) for review prior to this decision being issued.

ISSUE

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

FINDINGS OF FACT

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

1. On November 28, 2011, Claimant applied for MA-P and retro MA-P to September 2011.
2. On January 4, 2012, the Medical Review Team denied Claimant's request.
3. On April 5, 2012, Claimant submitted to the Department a request for hearing.

4. The State Hearing Review Team (SHRT) denied Claimant's request.
5. Claimant is 51 years old.
6. Claimant completed education through high school.
7. Claimant has employment experience (last worked 2006) as a roofer and a chef.
8. Claimant's limitations have lasted for 12 months or more.
9. Claimant suffers from depression, fatigue, personality disorder and seizures (alleged grand mal type).
10. Claimant has some limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.
11. Claimant has no significant limitations on understanding, carrying out, and remembering simple instructions; use of judgment; responding appropriately to supervision, co-workers and usual work situations; and dealing with changes in a routine work setting.

CONCLUSIONS OF LAW

MA-P is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department administers MA-P pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (RFT).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

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

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

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

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

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the claimant does not have

a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

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

Before considering step four of the sequential evaluation process, the trier must determine the claimant's residual functional capacity. 20 CFR 404.1520(e). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, the trier must consider all of the claimant's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the claimant has the residual functional capacity to do his/her past relevant work, then the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

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

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

In the present case, Claimant has been diagnosed with depression, fatigue, personality disorder and seizures. Claimant has a number of symptoms and limitations, as cited above, as a result of these conditions. Claimant and his representative filed an application for benefits based upon disability. Claimant's original medical packet contained one hospital admission from [REDACTED], with a discharge of [REDACTED]. Claimant was admitted following a fall resulting from a seizure. The medical records indicate that Claimant admitted he drank 3-4 beers daily. At discharge, the records indicate that Claimant had no further seizures while in the hospital. The records reveal Claimant was in medical noncompliance, his Dilantin levels were sub therapeutic and he had uncontrolled hypertension. Claimant indicated he was

taking his seizure medications as prescribed according to these same records. The CT scan of Claimant's brain taken during this hospital admission indicated the following: no acute intracranial process, small scalp hematoma in the posterior aspect of the calvarium superiorly, old nasal bone fracture and mild mucosal change involving the anterior ethmoidal air cells. The CT scan of the cervical spine revealed no acute findings. Cervical vertebral bodies maintain a normal height and alignment. Intervertebral disc spacing preserved. Mild degenerative changes present. There was no acute fracture or subluxation. The atlanto-dental interval was preserved. The craniocervical junction was unremarkable. The prevertebral soft tissues were within normal limits.

Claimant and his representative requested and were allowed to submit additional medical documentation to support their case. This medical documentation consisted of records from [REDACTED] regarding Claimant's left ankle injury and a CT scan of Claimant's brain and cervical spine which revealed no acute intracranial process, mildly displaced right nasal bone fracture, and no evidence of an acute cervical spine injury.

Claimant was examined by a consulting internist on [REDACTED]. This physician indicated the following diagnosis: hypertension, seizure disorder and status post fracture of left ankle. This physician indicated the following medical opinion:

Patient's blood pressure is fairly well controlled. He has no symptoms of angina or signs of congestive heart failure. There is no neck vein distension, heart murmur, gallop, pulmonary rales, visceromegaly, or leg edema. He also has a history of seizure. Risk factor is drinking beer every day. Apparently he claimed that he is compliant with medication, but he only sees his doctor every three months or longer for his medication. Neurologically, cranial nerves II-XII are intact. There is no localizing or lateralizing sign. The left ankle has no swelling, discoloration, tenderness or effusion. It has limitation of movement. He came in ambulatory. He used crutches but could walk without them. He can also walk on his toes and heels.

This physician further noted no limitation on Claimant's ability to sit, stand/walk or lift. It was noted that Claimant did not require the need of a cane or crutch for walking.

On [REDACTED], Claimant was given a mental status examination. This physician indicated a diagnosis of alcohol abuse, chronic, adjustment reaction with disturbance of mood. This physician indicated the following medical source statement:

The patient is a 51 year old male who is currently presenting with any significant cognitive impairment, problems with memory or concentration, depression or anxiety that would prevent him from doing at least simple work related activities

at a sustained pace. The medical evidence and objective data suggest that he has been struggling with chronic alcohol dependence and abuse for many years although he denies this interfering with his ability to do work related activities.

Claimant testified to the following symptoms and abilities: anger issues, fearful of having a seizure, two seizures every month, headaches, back pain, ankle pain, uses a crutch to walk, limited ability to walk, can stand 25 minutes, can sit 30 minutes, can lift 10 lbs, some weakness in left hand, able to cook, gets help with laundry, limited dusting and vacuuming, manages personal care, not able to drive, manages grocery shopping, anxiety attacks occurring every other day, suicidal thoughts occurring weekly, hearing voices, sees flying objects, problems with concentration and memory and easily tired. During the hearing, Claimant admitted he is still drinking but alleged he was drinking less.

The degree and severity of restriction on Claimant's daily activities as testified to by Claimant are not supported by the medical evidence submitted for consideration. The only indication of frequent seizures is from Claimant's testimony. The medical records submitted simply report what Claimant reported at admission. None of the medical records actually document a seizure occurring during admission or document more than the one incidence of Claimant falling, reportedly due to a seizure, resulting in his [REDACTED] admission.

The fourth step of the analysis to be considered is whether the claimant has the ability to perform work previously performed by the claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the claimant from doing past relevant work. In the present case, Claimant's past employment was as a roofer and a chef. Due to Claimant's seizure condition, he should avoid climbing ladders, operating machinery and driving. Given these restrictions, Claimant would be unable to perform the basic work function of a roofer. Claimant also worked as a chef. This would require operating small machinery such as stoves, slicers and other sharp kitchen utensils. Given the risk of injury due to potential seizures, this position would be discouraged. This Administrative Law Judge finds, based on the medical evidence and objective, physical, and psychological findings, that Claimant is not capable of the physical or mental activities required to perform any such position. 20 CFR 416.920(e).

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

1. residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and

3. the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite her limitations. 20 CFR 416.966.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little; a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

See *Felton v DSS* 161 Mich App 690, 696 (1987). Once the claimant makes it to the final step of the analysis, the claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 732 F2d 962 (6th Cir,

1984). Moving forward, the burden of proof rests with the State to prove by substantial evidence that the claimant has the residual function capacity for SGA.

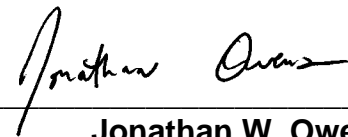
After reviewing the medical evidence submitted for consideration, this Administrative Law Judge finds no medical basis to limit Claimant's ability to stand/walk, sit or lift beyond that of a light work level. Claimant alleged psychiatric conditions at hearing; however, he failed to present medical documentation that would support a finding his alleged mental health issues present a marked impairment on his ability to perform basic work functions. Therefore, this Administrative Law Judge finds that Claimant has the residual functional capacity to perform work at least on a light work level.

Claimant is an individual closely approaching advanced age. 20 CFR 416.963. Claimant has a high school education. 20 CFR 416.964. Claimant's previous work was semi-skilled but these skills are not transferable. Federal Rule 20 CFR 404, Subpart P, Appendix 2, contains specific profiles for determining disability based on residual functional capacity and vocational profiles. Under Table I, Rule 202.14, Claimant is not disabled for purposes of the Medical Assistance program.

DECISION AND ORDER

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

Accordingly, the Department's decision is hereby UPHeld.



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

Date Signed: August 16, 2012

Date Mailed: August 16, 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

JWO/pf

cc:

