

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-57324
Issue No.: 2009;4031
Case No.: [REDACTED]
Hearing Date: August 29, 2012
County: Tuscola

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon the Claimant's request for a hearing made pursuant to Michigan Compiled Laws 400.9 and 400.37, which govern the administrative hearing and appeal process. After due notice, a telephone hearing was commenced on August 29, 2012, from Lansing, Michigan. Claimant personally appeared and testified along with his representative [REDACTED] [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Assistant Payment Supervisor [REDACTED] [REDACTED].

ISSUE

Whether the Department of Human Services (the department) properly denied 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 March 9, 2012, Claimant filed an application for MA-P/Retro-MA and SDA benefits alleging disability.
- (2) On May 1, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P/Retro-MA and SDA.
- (3) On May 2, 2012, the department caseworker sent Claimant notice that his application was denied.
- (4) On May 25, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On July 16, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform a wide range of simple, unskilled work. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of post traumatic stress disorder, depression, anxiety, attention deficit hyperactivity disorder (ADHD) and a learning disability.
- (7) Claimant is a 35 year old man whose birth day is [REDACTED]. Claimant is 5'4" tall and weighs 155 lbs. Claimant completed high school.
- (8) Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, (DHS or department), 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 Reference Tables Manual (RFT).

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 Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1). The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI disability standards, except

that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

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

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (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 an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to 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 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 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 testified that he is working part-time, 12 to 14 hours a week at \$[REDACTED] an hour, performing oil changes. Therefore, he is not disqualified from receiving disability benefits under Step 1.

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

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

6. Dealing with changes in a routine work setting.
Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Claimant alleges disability due to post traumatic stress disorder, depression, anxiety, attention deficit hyperactivity disorder (ADHD) and a learning disability.

On January 7, 2011, Claimant had a biopsychosocial assessment. Claimant had come in for detox services due to his use of alcohol and withdrawals. He had previous treatment but has failed to maintain his sobriety. He needs to work on developing skills for recovery and also needs stable housing. He appears to have symptoms of depression and should be monitored to rule it out. He appears to be in the contemplation stage as he appears to want to quit drinking and get his life together. Admitting diagnosis was Alcohol dependence, rule out depression and a GAF of 45. He will follow up with residential treatment after detox. Claimant was discharged from aftercare on February 18, 2011, with a diagnosis of Alcohol Dependence and Depression and a GAF of 55.

On October 18, 2011, Claimant was transported by ambulance to the [REDACTED]. He was treated for bronchitis at [REDACTED] emergency room and was not improving. He was admitted to [REDACTED] with an acute upper gastrointestinal bleed. He presented cooperatively yet in an irritable manner. He was alert and oriented and quite agitated. His mood was depressed, irritable, angry and frustrated. His affect was consistent with his mood. No evidence of cognitive deficit and/or psychotic behavior. His speech was given in a somewhat fast pace manner but there was no evidence of pressured speech. He had been taking Naprosyn over-the-counter and admits to drinking heavily, at least nine beers a day and intermittent vodka since age 15. He also smokes a pack a day for the past 17 years. His hemoglobin in the emergency room was 7.9. He was transfused two units and it went up to 9.3. He also had low potassium that was supplemented. His liver enzymes were slightly high, likely secondary from alcohol. His EKG revealed a normal left ventricular cavity size with mildly decreased left ventricular ejection fraction and regional wall motion abnormality. He was started on alcohol withdrawal protocol. He underwent an esophagogastroduodenoscopy (EGD) which showed a Mallory-Weiss tear as well as a gastric ulcer. He was diagnosed with (1) Blood loss anemia secondary to upper gastrointestinal bleed; (2) upper gastrointestinal bleed secondary to gastric ulcer Mallory-Weiss tear; (3) Gastric

ulcer; (4) Mallory-Weiss tear; (5) Alcohol abuse; (6) EGD; (7) Hypokalemia; (8) Nicotine abuse; and (9) Probably asthma. He was urged to go to an inpatient substance abuse treatment program to address his longstanding alcohol dependence. However, at this time, he is refusing to accept any help for alcohol abuse and dependence. Instead, he would like to follow up with [REDACTED] [REDACTED] [REDACTED] with counseling. He was discharged in stable condition on October 21, 2011 and instructed not to drink alcohol or use nonsteroidals, and to follow up with his primary care physician in two weeks and schedule a follow-up endoscopy in six weeks.

On December 20, 2011, Claimant underwent an initial psychiatric evaluation at [REDACTED] [REDACTED] [REDACTED] upon being referred due to his significant episodes of depression, and feelings of hopelessness and helplessness. Reportedly he is having a hard time sleeping and having nightmares. He is homeless. He does not have healthcare so he cannot see a physician. Reportedly he is having emphysema problems. He is working at [REDACTED] [REDACTED] and his manager referred him for services. He stated that he does not drink and the last time he drank was in late October. Claimant's appearance and grooming were less than fair. He did not appear in any acute physical distress. He did not present with abnormal involuntary movements. His speech is rapid and at times circumstantial. He is very focused about his financial issues and worries about how he is going to be living. He is also worried about whether he should be taking medications. He denied auditory and visual hallucinations. His responses at times are guarded. His affect is anxious and depressed. His mood is anxious. He denied suicidal and homicidal ideations at present, but did admit feeling hopeless and helpless and not seeing the purpose in living. He had difficulty focusing on cognitive testing. His attention and concentration is decreased. He is able to recall his past events but he had a hard time focusing on the cognitive function testing. Diagnosis: Axis I: Major depression, recurrent; PTSD; ADHD; Alcohol dependence; Learning disorder; GAF=45-50. Prognosis to be determined.

On March 2, 2012, Claimant saw his psychiatrist for a medication review. Claimant stated that he is still struggling with being able to pay attention and concentration. He is also experiencing difficulties sleeping, waking several times, feeling irritable and restless. Vyvanse was recommended to help with his difficulty concentrating, however without insurance, it could not be prescribed. His psychiatrist convinced him to try Seroquel to help his mood stability as well as his depression, anxiety and sleep. His affect is initially somewhat angry, but later much more relaxed. He stated he was not taking Remeron or Ambien as they had not been helping.

On May 15, 2012, Claimant met with his psychiatrist. Claimant stated he is doing a lot better. Reportedly, he is doing much better with his concentration and with his mood. He stated his boss had also noticed a change. He stated he likes how Vyvanse is helping him, but he would like to try a higher dose as he noticed that it wears off in the afternoon. His affect is pleasant and reactive. He reports sleeping fairly well. The Vyvanse was increased to 50 mg and he is scheduled to return in 2 months.

On September 25, 2012, Claimant's psychiatrist completed a Mental Residual Functional Capacity Assessment of Claimant. His psychiatrist noted no marked limitations. However, Claimant was moderately limited in his ability to understand and remember one or two-step instructions; understand and remember detailed instructions; carry out detailed instructions; maintain attention and concentration for extended periods; perform activities within a schedule, maintain regular attendance, and to be punctual within customary tolerances; sustain an ordinary routine without supervision; work in coordination with or proximity to others without being distracted by them; 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; accept instructions and respond appropriately to criticism from supervisors; get along with co-workers or peers without distracting them or exhibiting behavioral extremes; respond appropriately to change in the work setting; travel in unfamiliar places or use public transportation and to set realistic goals or make plans independently of others.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Claimant has presented some limited medical evidence establishing that he does have some mental limitations on his ability to perform basic work activities. The medical evidence has established that 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, 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 individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged mental disabling impairments due to post-traumatic stress disorder, depression, anxiety, attention deficit hyperactivity disorder (ADHD) and a learning disability.

Listing 12.00 (mental disorders) was considered in light of the objective evidence. Based on the foregoing, it is found that Claimant's impairment(s) does not meet the intent and severity requirement of a listed impairment; therefore, Claimant cannot be found disabled at Step 3. Accordingly, Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the individual's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the

national economy are not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s) and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, e. g., sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity to the demands of past relevant work must be made. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (e.g., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of

some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

Claimant is currently employed part-time changing oil. In light of Claimant's testimony, and in consideration of the Occupational Code, Claimant's current work is classified as unskilled, light work.

Claimant testified that he is able to walk a couple of miles and can lift/carry approximately 40 pounds and can stand for 45 minutes and sit for two hours time. If the impairment or combination of impairments does not limit an individual's physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920. In consideration of Claimant's testimony, medical records, and current limitations, it is found that Claimant is able to continue working at his current position. However, even though Claimant is found not disabled at this step, the eligibility process will continue to Step 5.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v) At the time of hearing, the Claimant was 35 years old and was, thus, considered to be a younger individual for MA-P purposes. Claimant has a high school education. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). The age for younger individuals (under 50) generally will not seriously affect the ability to adjust to other work. 20 CFR 416.963 (c). Where an individual has an impairment or combination of impairments that results in both strength limitations and non-exertional limitations, the rules in Subpart P are considered in determining whether a finding of disabled may be possible based on the strength limitations alone, and if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience, provide the framework for consideration of how much an individual's work capability is further

diminished in terms of any type of jobs that would contradict the non-limitations. Full consideration must be given to all relevant facts of a case in accordance with the definitions of each factor to provide adjudicative weight for each factor.

In this case, the evidence reveals that Claimant suffers from post traumatic stress disorder, depression, anxiety, and attention deficit hyperactivity disorder (ADHD) and a learning disability. The objective medical evidence lists no 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 which includes the ability to meet the physical and mental demands required to perform at least light work as defined in 20 CFR 416.967(a). After review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 202.20, it is found that Claimant is not disabled for purposes of the MA-P program at Step 5.

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, Retro-MA and SDA benefit programs. Accordingly, it is ORDERED:

The Department's determination is **AFFIRMED**.

/s/

Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: October 19, 2012

Date Mailed: October 19, 2012

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.

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