

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

IN THE MATTER OF:

[REDACTED]

Reg No.: 2012-6216
2012-22497
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: April 16, 2012
County Macomb (20)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

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, a hearing was held in Warren, Michigan on Monday, April 16, 2012. The Claimant appeared, along with [REDACTED] and testified. The Claimant was represented by [REDACTED] of [REDACTED], Inc. Participating on behalf of the Department of Human Services ("Department") was [REDACTED].

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 September 18, 2012, this office received the SHRT determination 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 programs?

FINDINGS OF FACT

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

1. On September 15, 2011, the Department received two applications for public assistance seeking MA-P benefits retroactive to June 2011 from the Claimant and his Authorized Representative.
2. On October 4, 2011, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 2)
3. The Department notified the Claimant of the MRT determination on October 10, 2011.
4. On October 17, 2011, the Department received the Claimant's timely written request for hearing.
5. On January 5, 2012, the Department received the Authorized Hearing Representative's timely written request for hearing.
6. On December 9, 2011, February 16th, and September 18, 2012, the SHRT found the Claimant not disabled. (Exhibits 4, 5)
7. The Claimant alleged physical disabling impairments due to wrist pain, knee pain, ankle pain, poor vision, high blood pressure, chest pain, diabetes, sleep apnea, and closed-head injury.
8. The Claimant alleged mental disabling impairments due to learning disorder, depression, cognitive dysfunction, and mental retardation.
9. At the time of hearing, the Claimant was 50 years old with a [REDACTED] birth date; was 5'11" in height; and weighed approximately 300 pounds.
10. The Claimant has a limited education under a special education program with an employment history as truck driver.
11. The Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

As a preliminary matter, the Department received two applications for MA benefits on behalf of the Claimant; one from the Claimant and another from his Authorized Hearing Representative ("AHR"). Both applications were dated the same date and, although assigned separate registration numbers, all parties were in agreement that for purposes of a disability determination, only one decision would issue reflecting both registration numbers.

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).

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a). First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1). When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2). Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3). The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d). If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR 416.920a(d)(2). If the severe mental impairment does not meet (or equal) a listed

impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3). R

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 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 wrist pain, knee pain, ankle pain, poor vision, high blood pressure, chest pain, diabetes, closed-head injury, sleep apnea, learning disorder, depression, cognitive dysfunction, and mental retardation.

On [REDACTED], the Claimant presented to the emergency room with complaints of right knee pain/inflammation. The Claimant weighed approximately 305 pounds. The physical examination revealed mild to moderate joint pain with movement of the right anterior knee. Moderate tenderness to palpitation over the right knee was noted; however, the Claimant maintained full range of motion. The Claimant's blood sugar was high. The swelling was primarily soft tissue swelling due to cellulitis. The Claimant was discharged with the diagnoses of local infection over the right knee, right knee pain, hyperglycemia, and hypertension.

On [REDACTED] the Claimant attended a consultative physical evaluation. The examination revealed obesity, paresthesia of the tips of the fingers and toes, positive Romberg testing, and painful left knee joint. The Claimant was unable to do rapid alternating hand movements or heel-to-shin testing on either side. Tenderness with diminished movement of the lumbar spine was also noted. Peripheral pulses were diminished. The Claimant was unable to squat, walk on heels and toes, and had difficulty getting on/off the examination table due to his enormous frame. The Claimant was limited to carrying, pushing, pulling of less than 10 pounds. The diagnoses were morbid obesity, diabetes mellitus, hypertension, and history of closed head injuries, septic arthritis in the left knee, anxiety, depression, mood swings due to bipolar disorder, and panic attacks. The Claimant also has a loss of memory, concentration, and comprehension as well as possible sleep apnea.

On [REDACTED], the Claimant attended a consultative mental status evaluation. The Claimant was found capable of understanding, attending to, remembering, and carrying out instructions related to unskilled work related behaviors. No cognitive or psychological tests were performed. The diagnosis was depressive disorder (not otherwise specified "NOS"). Amnestic disorder, learning disorder (NOS), and borderline intellectual functioning was not ruled out. The Global Assessment Functioning ("GAF") was 60 and the prognosis was guarded.

On [REDACTED] blood work confirmed diagnoses of hypertension, diabetes mellitus, and cellulitis. Further diagnoses included chronic obstructive pulmonary disease ("COPD") and tobacco use disorder.

On May 9th and June 27, 2012, the Claimant participated in a psychological evaluation with neuropsychological emphasis. General observations included abnormal posture and gait, slow gait, pain and limp in right leg, swollen hands, and marginal hygiene. A series of psychological testing were given with results considered valid. The Claimant's full scale IQ was 52. There was a 95% statistical change that the true full scale IQ would

fall between 49 and 57. The Psychologist opined that the Claimant desperately needed assistance for a multitude of mental, emotional, physical, and related problems. Moreover, any attempt at work would cause greater stress and further decline in functional abilities. The Claimant's ability to understand, remember, and carry out tasks of even a simple nature are severely impacted as were his abilities to respond appropriately to others, including co-workers and supervisors, and to adapt to change and perform work related activities in a reliable consistent, and persistent manner. These are not expected to improve and may deteriorate over the course of time. The diagnoses were cognitive disorder, personality changes secondary to traumatic brain injuries, major depressive disorder (chronic and severe with possible psychotic features), generalized anxiety disorder, panic disorder, post-traumatic stress disorder, chronic pain disorder, stress exacerbation of somatic symptoms, and nicotine addiction. The GAF was 40 noting several major impairments in areas such as work, family relations, judgment, thinking, and mood. The prognosis was poor.

On [REDACTED] the Mental Residual Functional Capacity Assessment was completed on behalf of the Claimant. The Claimant was marked limited in 13 of 20 factors and moderately limited in 5.

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 and mental limitations on his ability to perform basic work activities. 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 knee pain/swelling, COPD, hyperglycemia, hypertension, morbid obesity, diabetes mellitus, cellulitis, closed head injuries, depression, anxiety, mood swings, panic attacks, post-traumatic stress disorder, chronic pain disorder, cognitive dysfunction, learning disorder, and stress exacerbation of somatic symptoms.

Listing 12.00 encompasses adult mental disorders. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A The existence of a medically determinable impairment(s) of the required duration must be established through medical evidence consisting of symptoms, signs, and laboratory findings, to include

psychological test findings. 12.00B The evaluation of disability on the basis of a mental disorder requires sufficient evidence to (1) establish the presence of a medically determinable mental impairment(s), (2) assess the degree of functional limitation the impairment(s) imposes, and (3) project the probable duration of the impairment(s). 12.00D The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work consideration, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A

Listing 12.02 defined organic mental disorders which are psychological or behavioral abnormalities associated with a dysfunction of the brain. The history and physical examination are considered as well as the abnormal mental state and loss of previously acquired functional abilities. The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

- A. Demonstration of a loss of specific cognitive abilities or affective changes and the medically documented persistence of at least one of the following:
 - 1. Disorientation to time and place; or
 - 2. Memory impairment, either short-term (inability to learn new information), intermediate, or long-term (inability to remember information that was known sometime in the past); or
 - 3. Perceptual or thinking disturbances (e.g., hallucinations, delusions); or
 - 4. Change in personality; or
 - 5. Disturbance in mood; or
 - 6. Emotional lability (e.g., explosive temper outbursts, sudden crying, etc.) and impairment in impulse control; or
 - 7. Loss of measured intellectual ability of at least 15 I.Q. points from premorbid levels or overall impairment index clearly within the severely impaired range on neuropsychological testing, e.g., Luria-Nebraska, Halstead-Reitan, etc;

AND

- B. Resulting in at least two of the following:
1. Marked restriction of activities of daily living; or
 2. Marked difficulties in maintaining social functioning; or
 3. Marked difficulties in maintaining concentration, persistence, or pace; or
 4. Repeated episodes of decompensation, each of extended duration;

OR

- C. Medically documented history of a chronic organic mental disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:
1. Repeated episodes of decompensation, each of extended duration; or
 2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
 3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Listing 12.05 discusses mental retardation which refers to significantly sub-average general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period. The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied.

- A. Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded;

OR

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B. A valid verbal, performance, or full scale IQ of 59 or less;

OR

C. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function;

OR

D. A valid verbal, performance, or full scale IQ of 60 through 70, resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration.

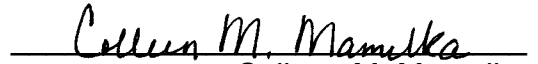
The evidence confirms treatment/diagnoses of knee pain/swelling, COPD, hyperglycemia, hypertension, morbid obesity, diabetes mellitus, cellulitis, closed head injuries, depression, anxiety, mood swings, panic attacks, post-traumatic stress disorder, chronic pain disorder, cognitive dysfunction, learning disorder, and stress exacerbation of somatic symptoms. Prior to 2009, the Claimant was worked successfully as a truck driver, despite a limited education under a special education program. Subsequently, the Claimant was in a roll-over accident resulting in yet another traumatic brain injury. The Claimant's valid full scale IQ was 52 with the most recent GAF of 40 along with a poor prognosis. The Claimant's intellectual functioning deficits, manifested in developmental years, resulted in the Claimant attending school under a special education program. Since the accident, the evidence confirms a change in personality, disturbance in mood and emotion liability which has resulted in marked limitations in activities of daily living, social functioning, and in the Claimant's ability to maintain concentration, persistence, or pace. The prognosis was poor and the Claimant was found unable to work. Ultimately, in light of the foregoing, the combination of the Claimant's mental limitations meet, or are the medical equivalent thereof, listed impairments 12.02 and 12.05. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

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 benefit program.

Accordingly, It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate processing of the September 15, 2011 application, retroactive to June 2011, to determine if all other non-medical criteria are met and inform the Claimant and his Authorized Hearing Representative of the determination in accordance with Department policy.
3. The Department shall supplement for any lost benefits (if any) that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.
4. The Department shall review the Claimant's continued eligibility in accordance with Department policy in November 2013.


Colleen M. Mamelka
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: October 12, 2012

Date Mailed: October 12, 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:

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- 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
Re consideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CMM/ctl

cc: [REDACTED]
Macomb County DHS (20)/1843

C. [REDACTED]
Mamelka