

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012 66282
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: November 8, 2012
DHS County: Oakland (02)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a telephone hearing was held in Detroit, Michigan, on November 8, 2012. The Claimant appeared and testified. [REDACTED] a witness, appeared on behalf of the Claimant. [REDACTED] ES, appeared on behalf of the Department of Human Services ("Department").

ISSUE

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

FINDINGS OF FACT

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

1. The Claimant submitted an application for public assistance seeking MA-P benefits on March 27, 2012.
2. On May 18, 2012, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp.)
3. The Department notified the Claimant of the MRT determination on May 24, 2012.

4. On July 9, 2012, the Department received the Claimant's timely written request for hearing.
5. On October 9, 2012 the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued on November 14, 2012 to obtain new medical evidence and updated medical examinations. The new evidence was submitted to the State Hearing Review Team on January 22, 2013.
7. On March 1, 2013 the State Hearing Review Team found the Claimant not disabled.
8. The Claimant alleges physical disabling impairments of low back pain, central disc herniation of the lumbar spine with degenerative disc disease. The Claimant also alleges pulmonary embolism.
9. The Claimant has alleged mental disabling impairments due to depression.
10. At the time of hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth date. Claimant is 5'10" in height; and weighed 235 pounds.
11. The Claimant has a ninth grade education and attended special education classes. The Claimant has an employment history working as a general laborer, and landscaping.
12. The Claimant's impairments have lasted or are expected to last 12 months in duration.

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, 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 Manual ("BRM").

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 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, 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 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).

The Claimant alleges physical disabling impairments due to low back pain, central disc herniation of the lumbar spine with degenerative disc disease. The Claimant also alleges pulmonary embolism.

The Claimant has alleged mental disabling impairments due to depression.

A summary of the medical evidence follows.

The Claimant's treating physician who treats him for back and neck pain indicated by letter that recent x-rays of the lumbar spine [REDACTED] show degenerative changes with osteophytic formation at multiple levels. These findings are consistent with the pain Claimant is experiencing on a daily basis making it difficult for him to work.

A preliminary MRI report of lumbar spine dated [REDACTED] found the following, evidence of disc desiccation at L2, L3, L4, and L5-S1. Early anterior osteophytosis is seen involving the lumbar vertebral bodies. At L3-L4 small disc bulge is present. The facet joints are prominent, the neural canals remain patent. At L5-S1 a small central protrusion is present, which abuts the thecal sac, the neural canals are patent, facet joints and ligamentum flavum are prominent. Impression: L5-S1, small central disc herniation without significant spinal canal stenosis, degenerative disc disease at L3-L4.

The Claimant was admitted to the hospital on [REDACTED] with pulmonary embolism, chest pain, chronic back pain, obesity and pulmonary nodules. Claimant was discharged [REDACTED]. The Claimant was administered an anticoagulant Warfarin and Coumadin for 3 months following discharge. At the time of admission the Claimant had been spending up to 20 hours per day in bed secondary to chronic back pain and presented with intense sharp pain up and down the left side of his chest and around to his back that was worse with deep breathing. A CT of the chest noted left lower lobe segmental and subsegmental pulmonary embolism, four subcentimeter pulmonary nodules involving the right upper lobe, right lower lobe and left upper lobe.

After the [REDACTED] hospitalization the Claimant was seen at an outpatient clinic anticoagulation service on a weekly basis for 3 months.

A Medical Examination Report was completed on [REDACTED] by Claimant's primary care physician. The diagnosis was pulmonary embolism, chronic back pain, 2°

L5-S1, disc protrusion, and L3- L4 degenerative disorder . The examiner noted positive straight leg raising Right 30° and left 45° and tenderness to palpation of lumbar, thoracic spine. The Claimant's flat affect was also noted. The Claimant's condition was stable. The exam further noted that activities of daily living were done by Claimant's wife as he has a hard time performing.

A medical Examination Report was also completed by Claimant's treating physician for his back on [REDACTED]. The diagnosis was Pulmonary Embolism and chronic back pain. Noted on examination pain in lumbar area on palpation. No hyperlordosis. The Claimant's condition was stable.

A Mental Residual Functional Capacity Assessment was conducted on [REDACTED]. The Claimant was found moderately limited in all categories. A Psychiatric Examination Report was completed on [REDACTED]. Claimant's grooming was poor, mood was depressed, affect was constricted and psychomotor activity was slowed. Thought content noted delusions. Attention and concentration was impaired, judgment was adequate. The diagnosis was Depressive Disorder, the GAF score was 40. Diagnostic summary stated long history of apathy, poor interpersonal skills, shy to talk to people and very often got kicked out of school as he was not able to have appropriate interaction. In summary, the examiner noted that patient has depression and apathy and poor concentration so that he is not able to hold onto job. Also has disabling back pain and cannot sit long.

A Psychiatric evaluation was [REDACTED] by Claimant's psychiatrist. At the exam Claimant's mood was depressed and affect was constricted, psychomotor activity was slowed, speech was soft, thought content noted delusions, no hallucinations were noted, attention/concentration was impaired. The diagnosis was Depressive Disorder, current GAF was 40, and the diagnostic summary noted long history of apathy, poor interpersonal skills, shy to talk to people and very often got kicked out of school, as he was not able to have appropriate interaction.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. 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.

Listing 1.04 Disorders of the Spine was reviewed and it was found that the Claimant did not meet the listing as no finding of stenosis or radiculopathy was present on the MRI evaluation.

Listing 12.04 Major Depressive Disorder was also considered but in light of the Claimant's treating psychiatrist's evaluation with no marked restrictions, it is determined that the listing was not met.

The fourth step in analyzing a disability claim requires an assessment of the claimant's residual functional capacity 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 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 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.*

The Claimant's prior work history consists of employment performing general labor, landscaping and truck unloading. This work would be considered unskilled medium work. Both of these jobs required standing most of the day.

In light of the Claimant's testimony and records, and in consideration of the Occupational Code, the Claimant's prior work is classified as unskilled, medium work.

The Claimant credibly testified that he is able to stand no more than 5 to 10 minutes, he can sit only 30 minutes due to back pain, and is not able to walk any significant distance one block, due to pain. Although he can drive, he drives only short distances and can drive no longer than 30 minutes at a time due to back pain. The Claimant has constant back pain and with medications pain level is a 5-6 with pain medication and requires assistance with drying off after showering and dressing which he receives from his wife. Claimant further credibly testified that he can lift only 5 pounds. He cannot bend at waist, cannot squat and spends most of his day in bed due to pain. The Claimant's testimony regarding his limitations was found by the undersigned to be credible. Two consultative examinations described earlier in this decision notes positive straight leg raising, and that the Claimant's pain is consistent with his MRI test results.

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 disability does not exist. 20 CFR 416.920. In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is not able to return to past relevant work; thus, the fifth step in the sequential analysis is required.

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). The Claimant is 47 years old and, thus, is considered to be younger individual for MA purposes. The Claimant has a limited education, 9th grade and attended special education classes. 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 substantiate 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 F 2d 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).

In this case the evidence reveals that the Claimant complains of continual back pain and is diagnosed with degenerative disc disease with osteophytic formation at multiple levels. His treating doctor finds that the recent MRI establish degenerative changes which he deems consistent with the pain the Claimant experiences daily and makes it

difficult for him to work. Claimant's internal medicine doctor indicates that Claimant needs assistance with activities of daily living and on examination found positive straight leg raising bilaterally. The Claimant's mental impairments have existed since a young age and although not markedly limited his GAF score is 40 and his treating psychiatrist who has treated him since [REDACTED] diagnosed Claimant as depressed chronically and poor concentration. It is noteworthy that a finding of moderately impaired in all categories on the mental residual functional capacity assessment indicates the Claimant's capacity to perform the activity is impaired across the board.

In this case the evidence and objective clinical findings reveal that the Claimant suffers low back pain, central disc herniation of the lumbar spine with degenerative disc disease. Claimant's mental impairment due to depression also impairs him in all categories of life activity.

The objective medical evidence provided by both the Claimant's treating doctors place the Claimant at the less than sedentary activity level. Deference was accorded to the opinions of the Claimant's treating doctors' opinions. The total impact caused by the physical impairment suffered by the Claimant, his ongoing mental impairments and his constant pain, as well as his limited education, when considered together require that a determination that he cannot reasonably be able to sustain substantial gainful employment. In doing so, it is found that the combination of the Claimant's physical impairments and mental impairments have a major impact on his ability to perform and sustain performance of basic work activities. Accordingly, it is found that the Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a). After review of the entire record, and in consideration of the Claimant's age, education, work experience and residual functional capacity it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

DECISION AND ORDER

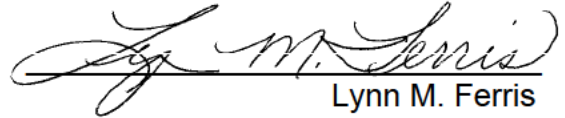
The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant disabled for purposes of the MA-P.

Accordingly, It is ORDERED:

1. The Department is ordered to initiate processing of the Claimant's MA-P, Retro MA-P and SDA application dated March 27, 2012 and award required benefits, provided Claimant meets all non-medical eligibility requirements.

2012-66282/LMF

2. The Department shall initiate review of the Claimant's disability case in March 2014 in accordance with Department policy.



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

Date Signed: March 21, 2013

Date Mailed: March 21, 2013

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.

LMF/cl

cc:

