

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

IN THE MATTER OF:

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██████████████████████████████

Reg No.: 2012-66544
Issue No.: 2009
Case No.: ██████████
Hearing Date: December 13, 2012
Wayne County DHS (57)

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 Claimant's request for a hearing. After due notice, a hearing was held in Detroit, Michigan on Thursday, December 13, 2012. Claimant appeared, along with ██████████, and testified. Claimant was represented by ██████████ of Medicaid Assistance Service, Inc. Participating on behalf of the Department of Human Services ("Department") was ██████████.

During the hearing, 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 forwarded to the State Hearing Review Team ("SHRT") for consideration. The SHRT found Claimant not disabled. This matter is now before the undersigned for a final determination.

ISSUE

Whether the Department properly determined that 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. Claimant submitted an application for public assistance seeking MA-P benefits - on September 6, 2011.

2. On April 17, 2012, the Medical Review Team (“MRT”) found Claimant not disabled. (Exhibit 1, pp. 6, 7)
3. On May 1, 2012, the Department notified Claimant of the MRT determination. (Exhibit 1, p. 4)
4. On July 24, 2012, the Department received Claimant’s timely written request for hearing. (Exhibit 1, p. 2)
5. On September 7, 2012, the SHRT found Claimant not disabled. (Exhibit 2)
6. On March 14, 2013, the SHRT found Claimant disabled effective September 2012, ongoing and not disabled for the period prior to September 2012.
7. Claimant alleged physical disabling impairments due to residual complications to include right side numbness and memory loss following a stroke, should pain, leg pain, and pancreatitis.
8. Claimant has not alleged any mental disabling impairment(s).
9. At the time of hearing, Claimant was 53 years old with an [REDACTED], birth date; was 5’3” in height; and weighed 169 pounds.
10. Claimant has a limited education and has not been employed over the last 15 years.

CONCLUSIONS OF LAW

As a preliminary matter and as noted in the Findings of Fact, the SHRT found Claimant disabled as of September 2012. Accordingly, the disability analysis for this decision focuses only on the period from September 2011 through August 2012.

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 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 (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 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).

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).

In the present case, the Claimant alleges disability due to residual complications to include right side numbness and memory loss following a stroke, should pain, leg pain, and pancreatitis.

On September 7, 2011, Claimant presented to the emergency room with complaints of abdominal pain. Claimant was admitted with the diagnosis of acute pancreatitis. Claimant was treated and discharged on or about September 11th.

On October 4, 2011, Claimant sought treatment for his hypertension.

On March 2, 2012, a consultative mental status evaluation was performed. Claimant presented with depressed mood and was found unable to manage benefit funds. The diagnoses were cannabis dependence in remission; cocaine dependence in remission; major depression with psychosis (psychosis in remission 1 to 2 months), post-traumatic stress disorder; alcohol dependence in 90 day remission; antisocial personality disorder; and passive/aggressive personality traits. The GAF was 50.

On this same date, a consultative evaluation was performed. Based on the examination, Claimant was found able to work an 8-hour work day finding him capable of standing, sitting, walking, and able to lift at least 10 pounds without difficulty. Claimant was found able to bend minimally. Range of motion testing was unremarkable. The diagnoses were chronic alcoholism, hypertension, and pancreatitis.

On April 12, 2012, Claimant presented to the emergency room with complaints of low back pain, abdominal bloating, nausea, and vomiting. X-rays revealed left lower lobe infiltrate. Claimant was treated and discharged with the diagnoses of acute pancreatitis, community acquired pneumonia ("CAP"), EtOH intoxication, chronic back pain, chronic knee pain, and epigastric abdominal pain.

On July 20, 2012, a Medical Examination Report was completed on behalf of Claimant. The current diagnoses were psychiatric disorder (bipolar or schizophrenia), elevated blood pressure, and left joint pain. Claimant's condition was deteriorating and he was found unable to lift/carry any weight; unable to stand, walk, or sit for extended periods; and unable to operate foot/leg controls. Claimant was unable to meet his needs in the home. Mentally, Claimant's memory, sustained concentration, comprehension, and ability to follow simple directions were limited.

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 medical evidence establishing that, for the period from September 2011 through August 2012, he had some physical and mental limitations on his ability to perform basic work activities. By July 2012, the degree of

functional limitation on the Claimant's activities, social function, concentration, persistence, or pace was marked. The degree of functional limitation in the fourth area (episodes of decompensation) is a 3. 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 acute pancreatitis, hypertension, major depression with psychosis, post-traumatic stress disorder, antisocial personality disorder, passive/aggressive personality traits; cannabis and cocaine dependence (in remission), chronic alcoholism, CAP, chronic back pain, and chronic knee pain.

Listing 1.00 (musculoskeletal system), Listing 4.00 (cardiovascular system), Listing 5.00 (digestive disorders), and Listing 12.00 (mental disorders), were considered in light of the objective evidence. The objective medical records establish serious physical and mental impairments; however, these records do not meet the intent and severity requirements of a listing, or its equivalent. Accordingly, the Claimant can not be found disabled, or not disabled, at Step 3.

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

To determine the physical demands (exertional requirements) of work in the national economy, jobs are 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 additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent 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, i.e. 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 with the demands of past relevant work. *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 (i.e. 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.*

In this case, the evidence confirms treatment/diagnoses of acute pancreatitis, hypertension, major depression with psychosis, post-traumatic stress disorder, antisocial personality disorder, passive/aggressive personality traits; cannabis and cocaine dependence (in remission), chronic alcoholism, CAP, chronic back pain, and chronic knee pain. At hearing, Claimant was unable to perform basic functional activities. For the period at issue, the evidence shows that mentally, Claimant's memory, sustained concentration, comprehension, and ability to follow simple directions were limited with a GAF of 50. A Mental Residual Functional Capacity Assessment was not completed so there was not documentation of marked limitations. That being

stated, the Medical Examination Report completed in July 2012, shows Claimant's condition was deteriorating such that he was unable to meet his needs in the home. After review of the entire record to include the Claimant's testimony, it is found that the Claimant maintains the residual functional capacity to perform unskilled, sedentary work as defined by 20 CFR 416.967(a).

The fourth step in analyzing a disability claim requires an assessment of the Claimant'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 is not considered. 20 CFR 416.960(b)(3).

Claimant has not worked over the last 15 years. As such, a determination of whether Claimant is able to return to past relevant work cannot be made. Accordingly, Claimant cannot be found disabled, or not disabled, at Step 4.

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, Claimant was 53 years old thus considered to be closely approaching advanced age for MA-P purposes. Claimant has a limited 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).

In this case, the evidence confirms treatment/diagnoses of acute pancreatitis, hypertension, major depression with psychosis, post-traumatic stress disorder, antisocial personality disorder, passive/aggressive personality traits; cannabis and cocaine dependence (in remission), chronic alcoholism, CAP, chronic back pain, and chronic knee pain. In July 2012, Claimant's condition had deteriorated such that he was unable to meet his needs in the home. It is reasonable to conclude that this condition did not develop over a short period of time. Instead, Claimant's condition progressed

during the period at issue. Ultimately, the combination of Claimant's physical along with his serious mental limitations, it is found that for the period from September 2011 through August 2012, Claimant was limited to unskilled, sedentary work. After review of the entire record, and in consideration of the Claimant's age, education, work experience, and RFC, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.09, it is found that 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 benefit program.

Accordingly, It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate processing of the September 2011 application to determine if all other non-medical criteria are met and inform Claimant, and his AHR, of the determination in accordance with Department policy.
3. The Department shall supplement for any lost lost benefits (if any) that Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.
4. The Department shall review Claimant's continued eligibility in accordance with Department policy in July 2014.

Colleen M. Mamelka

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

Date Signed: June 25, 2013

Date Mailed: June 25, 2013

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

CMM/tm

cc: [REDACTED]
[REDACTED]
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