

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012 69201
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: November 15, 2012
County: Oakland (04)

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 following Claimant's request for a hearing. After due notice, an in-person hearing was held on November 15, 2012 from Pontiac, Michigan. Participants on behalf of Claimant included the Claimant and [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

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

FINDINGS OF FACT

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

1. On January 13, 2012, Claimant applied for MA-P and retro MA-P to December 2011.
2. On April 21, 2012, the Medical Review Team denied Claimant's request.
3. On May 3, 2012 the Department sent the Claimant and the AHR notice of the MRT denial denying the Claimant's MA-P application. Exhibit 1

4. On August 1, 2012 The Claimant submitted to the Department a timely hearing request.
5. September 19, 2012 the State Hearing Review Team (SHRT) found the Claimant not disabled.
6. An Interim Order was issued on November 19, 2012 accepting new evidence submitted on the Claimant's behalf at the hearing.
7. The new evidence was provided to the State Hearing Review Team (SHRT) on November 19, 2012 and SHRT denied disability on January 16, 2013.
8. At the hearing the Claimant was 54 years old with a birth date of [REDACTED] [REDACTED] the Claimant is currently 55 years of age. The Claimant was 5'11" in height and weighed 185 pounds.
9. Claimant completed education through the 12th grade but did not graduate from high school.
10. Claimant has past employment experience (last worked 2009) as a construction worker doing demolition and renovation of old buildings. The Claimant also did light factory work alternatively standing and sitting depending on the job. The Claimant also was a metal finisher/machine operator processing parts and did some supervisory work with required paper work.
11. Claimant alleges mental disabling impairments due to anxiety disorder, depression and panic attacks.
12. Claimant alleges physical disabling impairments due to herniated discs in lower back which radiates to both legs, shoulder pain due to dislocation, and hernia in the groin area which wells and causes pain.
13. Claimant's limitations have lasted or are expected to last for 12 months or more.

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are

evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

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

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

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

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

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

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

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; 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 physical disabling impairments due to herniated discs in lower back which radiates to both legs, shoulder pain due to dislocation, and hernia in the groin area which wells and causes pain.

The Claimant alleges mental disabling impairments due to anxiety disorder, panic attacks and depression.

A summary of the medical evidence follows.

On [REDACTED] Claimant was seen requesting Klonopin. The Claimant was noted as having a flat voice and slow responses.

On [REDACTED] Claimant was seen at [REDACTED] and for psychiatric complaint, the diagnosis was chronic anxiety but was referred to [REDACTED] for help.

On [REDACTED] Claimant was seen again at ER for anxiety.

On [REDACTED] Claimant was evaluated at [REDACTED] and was diagnosed Major Depressive Disorder and was prescribed medication.

On [REDACTED] Claimant was seen for right wrist pain and treated for tendonitis.

On [REDACTED] the Claimant was seen at the ER for anxiety and panic attacks. Claimant was released the same day in stable condition with a diagnosis of Anxiety Disorder and was referred for outpatient treatment.

At the time of intake with DHS on December 22, 2011 the caseworker who prepared the DHS 49B noted Claimant was very anxious, talking very rapidly, and answers to his questions had to be repeated more than once. Breathing is at a fast pace.

Claimant was also seen on [REDACTED] for anxiety and panic attacks and had run out of his medications.

The Claimant was seen on [REDACTED] for anxiety and depression from ER referral. Patient was seeing a psychiatrist for a while but stopped due to financial issues - has no insurance. Patient's anxiety was relatively stable. Claimant was referred to [REDACTED] for psychiatrist evaluation and treatment.

A consultative psychiatric examination was conducted on [REDACTED]. The report notes that due to lack of money the Claimant can no longer treat with a psychiatrist. The summary impressions indicate that Claimant did not display any behaviors consistent with anxiety such as fear, nervousness, suspicious behavior, agitation, discomfort and so on. The examiner gave no diagnosis.

On [REDACTED] patient seen for blood pressure check. The history notes tapering dose of clonidine causing nightmares and hallucinations in sleep. Assessment/Plan notes anxiety stable but may be related to withdrawal of clonidine.

On [REDACTED] Claimant was seen for blood pressure check also notes parasomnia one time. Prior herniated disc problem recurred but exam of spine noted positive for posterior tenderness, paravertebral muscle spasm, normal flexion, extension and lateral. Straight leg raising test supine negative.

On [REDACTED] Claimant was seen for review at [REDACTED] and noted difficulty in breathing sometimes and shortness of breath lying flat. At this exam blood pressure was not well controlled.

On [REDACTED] the Claimant was seen for medication review at [REDACTED] a blood pressure follow up. The history taken notes that blood pressure is better controlled after increasing lisinopril with no dizziness, palpitations or chest pain. The Claimant's assessment/plan noted hypertension was stable, anxiety was stable and that Claimant was working on lowering down klonopin by increasing coping skills for anxiety.

[REDACTED] the Claimant was seen for an office visit for hypertension. Note indicates his anxiety is doing fine. Patient has anxiety attacks pretty much every day. Assessment/plan was costochondritis. Ibuprofen prescribed as needed and is controlling pain and to rest muscles.

The Claimant was seen for an office visit physical. The physical exam noted no abdominal tenderness and no hepatic enlargement of hernia (right) present only with standing. No unusual anxiety Normal range of motion for age was noted. Reduced klonopin and deferred psych consult due to lack of insurance.

On [REDACTED], advised to taper off Klonopin.

A psychiatric evaluation was performed by the Claimant's treating psychiatrist on [REDACTED] the report notes that Claimant was in treatment from [REDACTED]. He also saw a [REDACTED] but cannot continue as he has no insurance. The Claimant was observed to be anxious and dysphonic and depressed with constricted affect. Claimant's attention was noted as adequate. The GAF score was 50. The diagnosis was depressive disorder and anxiety disorder, secondary.

The Claimant participated with his assigned case manager on [REDACTED].

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 objective medical evidence establishing that he does have some physical and mental limitations on his ability to perform basic work activities. Accordingly, the Claimant has an impairment, or combination thereof, that has more than a *de minimus* 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 Claimant alleges physical disabling impairments due to herniated discs in lower back which radiates to both legs, shoulder

pain due to dislocation, and hernia in the groin area which wells and causes pain. The Claimant also alleges mental disabling impairments due to anxiety disorder, depression and panic attacks. Listings 12.04 Affective Disorders (Depression) and 12.06 Anxiety related disorders were reviewed as were 1.02 Major Disfunction of a Joint and 1.04 Disorders of the Spine and ultimately based upon the objective medical evidence it is determined that the listing requirements were not met.

The fourth step of the analysis to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the Claimant from doing past relevant work. In the present case, Claimant's past employment involved working as a metal finisher, a machine operator, and performing some supervisory work processing parts for paint lines. Other prior work involved demolition and rehabilitation of old buildings and light factory work. The Claimant also drove a hi lo. The Claimant also in his demolition job lifted drywall and debris weighing upwards of 50 pounds removing debris and demolition waste. The Claimant was terminated from his metal finishing job due anxiety and missing work as well as problems with his back. These various jobs required Claimant to be capable of lifting weight in excess of 20 lbs and performing carrying, lifting, climbing, and standing most of the day, as well as supervising a crew of 7 when he was employed by the metal finishing plant. The Claimant's past work is characterized as medium semi skilled work. This Administrative Law Judge finds, based on the medical evidence and objective, physical, and psychological findings, that Claimant is not capable of the physical or mental activities required to perform any of his past relevant work, and thus a Step 5 analysis is required 20 CFR 416.920(e).

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

1. residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and
3. The kinds of work which exist in significant numbers in the national economy which the Claimant could perform despite his limitations. 20 CFR 416.966.

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

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

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

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

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

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

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 54 years old and is not 55 and thus is considered to be of advanced age for MA-P purposes. The Claimant has the equivalent of a 12th grade education and his skills are not transferable. 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). Individuals of advanced age (age 55) may be significantly limited in vocational adaptability if they are restricted to sedentary work. 20 CFR 416.963(d).

In this case Claimant credibly testified that he gets anxious in crowds and driving on freeways, he has back pain which radiates when it flares up once or twice a week, that he can stand for 15 to 20 minutes, sit for 2 hours, and can lift occasionally 15 pounds, but due to his left shoulder dislocation cannot carry weight with that hand, and has difficulty sleeping. The Claimant's medical records document a 20-plus year history of anxiety and panic attacks which are better although recurring without medication. The Claimant when suffering from anxiety has lost his employment in the past and has had frequent admissions to the emergency room and is also currently treating for his anxiety.

After a review of the entire record, including the Claimant's testimony and medical evidence presented, it is determined that Claimant's impairments have a major effect on his ability to perform basic work activities. 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 to meet the physical and mental demands required to perform sedentary work as defined in 20 CFR 416.967(a). Based upon the foregoing review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, and Appendix II] as a guide, specifically Rule 201.201.04. 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 upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of September 2010.

Accordingly, the Department's decision is hereby REVERSED

1. The Department is ORDERED to initiate a review of the application dated January 13, 2012 and the Claimant's retro application (December 2012) if not done previously, to determine Claimant's non-medical eligibility criteria are met.
2. A review of this case shall be set for February 2013.



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

Date Signed: February 13, 2013
Date Mailed: February 13, 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

LMF/cl

cc:

