

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Reg No.: 2012-73704
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: December 19, 2012
Oakland County DHS (04)

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 telephone hearing was conducted from Detroit, Michigan on Wednesday, December 19, 2012. Claimant appeared, along with [REDACTED] of [REDACTED], and testified. Participating on behalf of the Department of Human Services ("Department") was [REDACTED]
[REDACTED]

During the hearing, Claimant waived the time period for the issuance of this decision, in order to allow for the submission of additional medical evidence. The records were received, reviewed, and 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 decision.

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. The Claimant submitted an application for public assistance seeking MA-P benefits on May 3, 2012.

2. On June 19, 2012, the Medical Review Team (“MRT”) found the Claimant not disabled. (Exhibit 1, pp. 8, 9)
3. On June 25, 2012, the Department notified the Claimant of the MRT determination. (Exhibit 1, pp. 6, 7)
4. On August 28, 2012, the Department received the Claimant’s written request for hearing. (Exhibit 1, pp. 3, 4)
5. On October 18, 2012 and March 13, 2013, the SHRT found the Claimant not disabled. (Exhibit 2)
6. The Claimant alleged physical disabling impairments due to shortness of breath, emphysema, enlarged left ventricle, and headaches.
7. The Claimant alleged mental disabling impairments due to bipolar disorder, attention deficit hyperactive disorder (“ADHD”), anxiety, depression, post-traumatic stress disorder (“PTSD”), and anti-personality disorder.
8. At the time of hearing, the Claimant was 49 years old with an [REDACTED] birth date; was 6’1” in height; and weighed 194 pounds.
9. The Claimant is a high school graduate with some college and an employment history as an inexperienced machinist and general laborer.

CONCLUSIONS OF LAW

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).

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 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 shortness of breath, emphysema, enlarged left ventricle, headaches, ADHD, anxiety, depression, PTSD, and anti-personality disorder.

On April 5, 2012, an initial assessment was performed resulting in a referral for treatment. The conditional diagnoses by the medical assistant (versus a psychiatrist or psychologist) were bipolar disorder (severe), anxiety (not otherwise specified), impulse control disorder (not otherwise specified), cocaine dependence, and anti-social personality disorder. The Global Assessment Functioning was 52.

On April 23, 2012, a Psychiatric Evaluation was performed. The diagnoses were mood disorder (not otherwise specified ("NOS")), ADHD, PTSD, and anti-social personality disorder. The Global Assessment Functioning ("GAF") was 52.

On April 30, 2012, a Psychiatric/Psychological Examination Report and a Mental Residual Functional Capacity Assessment were completed on behalf of Claimant. The diagnoses were mood disorder (not otherwise specified (NOS), ADHD, PTSD, and anti-social personality disorder. The Global Assessment Functioning ("GAF") was 52. Claimant was moderately limited in 12 factors and not significantly limited in 7 factors. Claimant was markedly limited in his ability to set realistic goals or make plans independently of others.

On May 24, 2012, a Mental Health Assessment was performed. The diagnoses were mood disorder (NOS), ADHD, PTSD, cocaine dependence, and anti-social personality. The GAF was 52.

On May 8th, June 5th, July 31st, August 28th, October 31, 2012, a Medication Review was performed. The mental status examination was unremarkable. The diagnoses were mood disorder (NOS), ADHD, PTSD, cocaine dependence, anti-social personality disorder. The GAF was 2. With the exception of the August Medication Review where Claimant's clinical status was unstable, all other months the clinical status was improving.

On August 16, 2012, a Mental Health Assessment was performed. In addition to the diagnoses above, obsessive compulsive disorder was added. The GAF was 52.

On November 1, 2012, blood work confirmed, in part, high cholesterol.

On January 7, 2013, Claimant attended a consultative evaluation. The physical examination was unremarkable. The impressions were chronic obstructive pulmonary disease ("COPD") without treatment of evidence of distress; hyperlipidemia; right ventricular enlargement (by history) clinically stable; paroxysmal low back pain with no motor or neurological deficits; hearing loss (by history) but not evident during exam; and bipolar disorder, ADHS, and anti-social personality disorder. A pulmonary function test revealed a Forced Vital Capacity ("FVC") of 4.04, 3.95, and 3.74 and a Forced Expiratory Volume at 1 second ("FEV₁") of 3.6, 3.45, and 3.17 before bronchodilator. Claimant coughed during testing and stated he could not perform test after bronchodilator. Claimant's lung age was estimated at 70. Limitations included avoided dust, fumes, smoke, extreme temperatures, and pulmonary irritants. Otherwise, Claimant was found able of performing job duties.

On this same date, a Medical Examination Report was completed on behalf of Claimant. The current diagnoses were hyperlipidemia, ventricle enlargement, hearing loss, and low back pain. Claimant was in stable condition and able to meet his needs in the home.

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 degree of functional limitation on the Claimant's activities, social function, concentration, persistence, or pace is mild. The degree of functional limitation in the fourth area (episodes of decompensation) is a 1. 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 (by physicians/psychiatrists) include mood disorder (NOS), ADHD, PTSD, anti-social personality disorder, cocaine dependence, high cholesterol, COPD, hyperlipidemia, right ventricular enlargement (stable), low back pain, and hearing loss.

Listing 1.00 (musculoskeletal system), Listing 2.00 (special senses and speech), Listing 3.00 (respiratory system), Listing 4.00 (cardiovascular system), and Listing 12.00 (mental disorders) were considered in light of the objective medical evidence. There were no objective findings of major joint dysfunction, fracture, or nerve root impingement; ongoing treatment for shortness of breath or COPD; or persistent, recurrent, and/or uncontrolled (while on prescribed treatment) cardiovascular impairment. There was no evidence of significant hearing loss. The evidence does not show that the Claimant symptoms persist despite prescribed treatment or that the Claimant has very serious limitations in his ability to independently initiate, sustain, or complete activities of daily living. Mentally, there was no evidence of any marked limitations in any functional area with the exception of Claimant's ability to set realistic goals or make plans independently of others. In August, the clinical status was unstable; however, all other records show Claimant is improving. Although the objective medical records establish some physical and mental impairments, 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; therefore, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

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 to 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 (by physicians/psychiatrists) include mood disorder (NOS), ADHD, PTSD, anti-social personality disorder, cocaine dependence, high cholesterol, COPD, hyperlipidemia, right ventricular enlargement (stable), low back pain, and hearing loss. Claimant testified that he is able to walk with occasional shortness of breath; grip/grasp without issue; sit for 2 hours; lift/carry over 10 pounds; stand for about 2 hours but with back pain; and is able to bend but experiences difficulty bending. Physical limitations included the avoidance of dust, fumes, smoke, extreme temperatures, and pulmonary irritants; otherwise, Claimant was found cable of performing job duties. Mentally, the evidence shows moderate limitations in 12 factors and no significant limitations in 7 factors with a GAF of at least 52. After review of the entire record and considering the Claimant's testimony, it is found, at this point, that the Claimant maintains the residual functional capacity to perform at least unskilled, sedentary to light work as defined by 20 CFR 416.967(a) and (b).

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).

The Claimant's prior employment was as an inexperienced machinist and as a general laborer (2 weeks at a fast food restaurant and janitorial work while incarcerated). In consideration of the Claimant's testimony and Occupational Code, the prior employment is classified as unskilled, light work. 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. As noted above, the objective evidence does not contain significant physical or mental limitations that would preclude all employment. In light of the entire record and the Claimant's RFC (see above), it is found that Claimant may not be able to return to past relevant work. Accordingly, the Claimant cannot be found disabled, or not disabled, at Step 4.

In Step 5, an assessment of the Claimant'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 49 years old and, thus, considered to be a younger individual for MA-P purposes. The Claimant is a high school graduate with some college. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). The age for younger individuals (under 50) generally will not seriously affect the ability to adjust to other work. 20 CFR 416.963(c).

In this case, the evidence confirms treatment/diagnoses (by physicians/psychiatrists) include mood disorder (NOS), ADHD, PTSD, anti-social personality disorder, cocaine dependence, high cholesterol, COPD, hyperlipidemia, right ventricular enlargement (stable), low back pain, and hearing loss. Claimant testified that he was able to perform physical activity comparable to sedentary/light activity with some limitations. The objective evidence further supports this activity level. Mentally, there were not marked restrictions that would prevent the performance of unskilled work. 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 at least unskilled sedentary work as defined in 20 CFR 416.967(a). After review of the entire record, finding no contradiction with the Claimant's non-exertional limitations, and in consideration of the Claimant's age, education, work experience, RFC, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.21 and 201.22, Claimant is found not disabled at Step 5.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant not disabled for purposes of the MA-P benefit program.

Accordingly, it is ORDERED:

The Department's determination is AFFIRMED.

Colleen M. Mamelka

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

Date Signed: June 26, 2013

Date Mailed: June 26, 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:

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