

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-21034
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 27, 2012
Wayne County DHS (31)

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, an in person hearing was held in Detroit, Michigan on June 27, 2012. The Claimant appeared and testified. [REDACTED] of [REDACTED] the Claimant's Authorized Hearing Representative (AHR) 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") and retro 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:

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 and retro MA-P benefits (March 1, 2011) on April 27, 2011.
2. On November 23, 2011, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 2)

3. The Department notified the Claimant of the MRT determination on November 22, 2011.
4. On December 12, 2011, the Department received the Claimant's timely written request for hearing.
5. On May 23, 2012, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 1)
6. An Interim Order was issued on July 3, 2012, and additional evidence was ordered to be obtained and submitted.
7. The new evidence was submitted to the State Hearing Review Team for its review on August 30, 2012.
8. On September 14, 2012, the State Hearing Review Team found the Claimant not disabled. (Exhibit 4)
9. The Claimant alleged mental disabling impairments due to depression.
10. The Claimant alleged physical disabling impairments due to asthma, and lower back pain.
11. At the time of hearing, the Claimant was 42 years old, with a [REDACTED] birth date; the Claimant is now 43 years of age. The Claimant was 6'4" in height; and weighed 270 pounds.
12. The Claimant has the equivalent of a 10th grade education and an employment history last working in 2009 performing lawn service work for one month. The Claimant also worked for one year doing lawn maintenance, drove a taxi cab for two years, and worked for a temporary agency for one year performing light industrial work.
13. The Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

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 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) An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done (or intended) for pay or profit. 20 CFR 416.910(a)(b) Substantial gainful activity is work activity that is both substantial and gainful. 20 CFR 416.972 Work may be substantial even if it is done on a part-time basis or if an individual does less, with less responsibility, and gets paid less than prior employment. 20 CFR 416.972(a) Gainful work activity is work activity that is done for pay or profit. 20 CFR 416.972(b)

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 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 mental disabling impairments based on depression. On [REDACTED] a psychiatric consultative examination was performed. The Claimant reported depression and no motivation; that he was isolated and aloof from others with tiredness and fatigue. The diagnosis was major depressive disorder, recurrent and a secondary diagnosis of polysubstance abuse. The Claimant is currently in a methadone maintenance program. The GAF score was 60. The examiner noted that the Claimant was not able to manage his benefit funds.

A mental residual functional capacity assessment was performed as part of the consultative psychiatric exam and the Claimant was markedly limited in 4 of 20 mental activities. The Claimant was markedly limited (cannot usefully perform or sustain the activity) in the ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. The Claimant was also markedly limited in his ability to interact appropriately with the general public. The Claimant was markedly limited in ability to travel in unfamiliar places, or use public transportation, and was markedly limited in the ability to set realistic goals or make plans independently. The Claimant was moderately limited in the remaining mental activities, which indicated that the Claimant's ability was impaired. The Claimant is not in treatment for his depression but has been prescribed Celexa for the last year.

The Claimant also alleges physical disabling impairments based on lower back pain and asthma. A consultative examination was performed on [REDACTED]. The exam noted that left straight leg raising was associated with pain and that lower back movements were restricted to about 50% of normal range. The examiner concluded that Claimant has chronic lower back pain with radiculitis to the left leg and recommended physiatry or physical medicine specialist evaluation with x-rays of lumbosacral spine. The examiner concludes finding "In general this patient is certainly not able to do a job involving heavy lifting, pushing or pulling or frequent climbing." The exam notes indicated that the Claimant was limited to lifting carrying 25 pounds 2/3 of an 8 hour day and could stand and or walk at least 2 hours in an 8 hour workday.

The Claimant has had numerous hospitalizations for asthma. On [REDACTED] the Claimant was admitted for a three day period and received serial nebulized breathing treatments and was discharged as stable. The admission was for acute exacerbation of asthma.

On [REDACTED] the Claimant was again admitted for asthma and was hospitalized for 3 days with noted wheezing and exacerbation of asthma. The Claimant received breathing treatments, as well as IV steroids. The discharge summary concludes that because of the Claimant's age, as well as co-morbidities, patient's overall prognosis is guarded and future hospitalizations can no doubt be expected.

██████████, the Claimant was admitted for emergency treatment for asthma exacerbation.

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 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 C.F.R., Part 404. The Claimant asserts mental disabling impairments due to Major Depressive Disorder recurrent, and physical disabling impairments due to chronic lower back pain with radiculitis and asthma.

Listing 12.04 (A), (B) Mental Disorders was considered and it was determined based upon the objective medical evidence that the Claimant did not meet the listing. Likewise Listing 1.04 Musculoskeletal System, Disorders of the spine was considered and based upon the objective medical evidence the Claimant's condition did not meet the listing. Lastly Listing 3.03 (B) Respiratory System, Asthma was considered and will be analyzed next.

Listing #.03 provides:

3.03 Asthma. With:

A. Chronic asthmatic bronchitis. Evaluate under the criteria for chronic obstructive pulmonary disease in 3.02A;

or

B. Attacks (as defined in 3.00C), in spite of prescribed treatment and requiring physician intervention, occurring at least once every 2 months or at least six times a year. Each in-patient hospitalization for longer than 24 hours for control of asthma counts as two attacks, and an evaluation period of at least 12 consecutive months must be used to determine the frequency of attacks.

Episodic respiratory disease. When a respiratory impairment is episodic in nature, as can occur with exacerbations of asthma, cystic fibrosis, bronchiectasis, or chronic

asthmatic bronchitis, the frequency and intensity of episodes that occur despite prescribed treatment are often the major criteria for determining the level of impairment.

3.00 Documentation for these exacerbations should include available hospital, emergency facility and/or physician records indicating the dates of treatment; clinical and laboratory findings on presentation, such as the results of spirometry and arterial blood gas studies (ABGS); the treatment administered; the time period required for treatment; and the clinical response.

A review of the medical evidence presented at the hearing documented by hospitalizations of the Claimant due to asthma total 5 within a 12 month period. The last documented emergency room admission in [REDACTED] caused the treating physician to comment that given the Claimant's age and comorbidities, patient's overall prognosis is guarded and future hospitalizations can no doubt be expected. A further review of hospitalizations due to severe asthma exacerbation in 2010, confirms the prognosis and that the Claimant's condition is chronic and ongoing. The statement by the hospital physician overseeing the Claimant's care is found to be very persuasive in establishing the severity and persistence of Claimant's asthma condition. The medical evidence presented demonstrates prolonged symptomatic episodes lasting one or more days and requiring intensive treatment using prolonged inhaled bronchodilator therapy in a hospital, emergency room or equivalent setting.

Ultimately, based on the medical evidence, the Claimant's impairment(s) meets, or is the medical equivalent of, a listed impairment within 3.00, specifically 3.03. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

DECISION AND ORDER

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

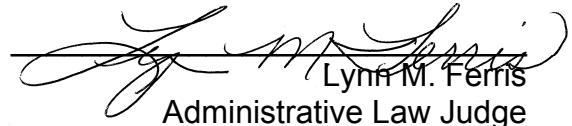
Accordingly, It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate processing of the April 27, 2011 application and any retro months to determine if all other non-medical criteria are met and inform the Claimant of the determination in accordance with Department policy.
3. The Department shall supplement for any lost benefits (if any) that the Claimant was entitled to receive in accordance with the April 27, 2011

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application and any retroactive period, if otherwise eligible and qualified in accordance with Department policy.

4. The Department shall review the Claimant's continued eligibility in October 2013 in accordance with Department policy.


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

Date Signed: 10/9/2012

Date Mailed: 10/9/2012

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases).

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- 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 to:

Michigan Administrative hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

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cc:



MAHS