

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

IN THE MATTER OF:

[REDACTED]

Reg No.: 2012-43431
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: June 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 the Claimant's request for a hearing. After due notice, a hearing was held in Detroit, Michigan on Wednesday, June 13, 2012. The Claimant appeared, along with [REDACTED] and [REDACTED] and testified. The Claimant was represented by [REDACTED] of [REDACTED]. Participating on behalf of the Department of Human Services ("Department") was [REDACTED].

During the hearing, the 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 received, reviewed, and forwarded to the State Hearing Review Team ("SHRT") for consideration. On September 7, 2012, the SHRT found the Claimant not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefit programs?

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, retroactive to October 2011, and SDA benefits on January 31, 2012. (Exhibit 1, pp. 81 – 112)

2. On March 13, 2012, the Medical Review Team (“MRT”) found the Claimant not disabled. (Exhibit 1, pp. 6, 7)
3. The Department notified the Claimant of the MRT determination on March 15, 2012. (Exhibit 1, p. 4, 5)
4. On April 6, 2012, the Department received the Claimant’s written request for hearing.
5. On May 17th and August 31, 2012, the SHRT found the Claimant not disabled. (Exhibit 5)
6. The Claimant alleged physical disabling impairments due to severe asthma.
7. The Claimant alleged mental disabling impairment(s) due to learning disability, attention deficit hyperactivity disorder (“ADHD”), and depression.
8. At the time of hearing, the Claimant was 22 years old with a [REDACTED] birth date; was 5’6 in height; and weighed 190 pounds.
9. The Claimant has a limited education and an employment history as a general laborer, in lawn care, and as a dish washer.
10. 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 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 to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If 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 severe asthma, learning disability, depression, and ADHD.

In support of his claim, a multidisciplinary evaluation was submitted which was completed on April 29, 2002. The Claimant had a significantly impaired level of cognitive functioning in the areas of mathematics, calculation, mathematics reasoning, basic reading skills, and reading comprehension and was consistently behind his peers. The Claimant's full scale IQ was 69. The diagnoses were ADHD, oppositional defiant disorder, dysthymia (long-term depressive mood), and a Global Assessment Functioning ("GAF") of 52. The Claimant was educable mentally impaired.

On [REDACTED] the Claimant attended a consultative physical evaluation. The Claimant was found able to work an 8-hour work day stating he was able to sit, stand,

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walk, bend, and lift at least 20 pounds without difficulty. The impressions were history of asthma (stabilized with treatment) and history of ADHD.

On [REDACTED] the Claimant presented to the hospital with complaints of wheezing and asthma exacerbation. The Claimant was treated and discharged the following day.

On [REDACTED] the Claimant was admitted to the hospital for asthma exacerbation. A chest x-ray found left lower lung pleural and parenchymal disease. He was treated and discharged the following day.

On [REDACTED] a consultative mental status examination was completed. The Claimant's self-esteem was noted as was his limited insight. The Claimant was found able to understand, remember, and follow through with directions albeit with a learning disability. The diagnoses were dysthymic disorder and learning disorder with a GAF of 60. The prognosis was guarded.

On [REDACTED] the Claimant was admitted to the hospital for asthma exacerbation. He was treated and discharged the following day.

On [REDACTED] the Claimant was treated via the emergency room for asthma exacerbation.

On [REDACTED], the Claimant was treated in the emergency room for asthma exacerbation.

On [REDACTED], chest x-rays documented mild changes on the left, likely chronic.

On [REDACTED], the Claimant was treated in the emergency room for asthma exacerbation.

On [REDACTED] the Claimant was admitted to the hospital with asthma exacerbation. The Claimant was discharged the following day.

On [REDACTED], the Claimant was admitted to the hospital with complaints of wheezing and asthma exacerbation. The Claimant was treated and discharged the following day.

On [REDACTED], the Claimant was admitted to the hospital with wheezing and asthma exacerbation. The physical examination noted diffuse wheezing in all lung fields, inspiratory and expiratory. The Claimant used his nebulizer but was not compliant with medication due to a lack of insurance/affordability. The Claimant was treated and discharged on October 9th.

On [REDACTED] IQ testing was performed. The Psychologist opined that the Claimant exaggerated his cognitive impairments and the testing results were likely not valid. The full scale IQ was 47. The Claimant was found able to do at least simple routine tasks on a sustained pace and interact in social environments. The GAF was 55 and the prognosis was guarded.

On [REDACTED], the Claimant was treated in the emergency room for wheezing and asthma exacerbation.

On [REDACTED] the Claimant was treated in the emergency room for his asthma.

On [REDACTED] the Claimant was admitted to the hospital with complaints of dyspnea. Chest x-rays were normal. The Claimant was treated and discharged the following day.

On [REDACTED] the Claimant was admitted to the hospital with complaints of shortness of breath. The Claimant was treated and discharged the following day. This was the Claimant's third admission that month. The diagnosis was severe, persistent asthma.

On [REDACTED] the Claimant was admitted to the hospital with complaints of breathing difficulty. X-rays revealed minimal left basal scarring. The Claimant was discharged the following day.

The Claimant was hospitalized from [REDACTED] for treatment for asthma exacerbation. Chest x-ray revealed blunting of the left costophrenic angle due to scarring or small pleural effusion.

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 he does have some physical and mental limitations on his ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de 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 evidence confirms diagnoses/treatment for severe asthma, ADHD, dysthymic disorder, ODD, and learning disability.

Listing 3.00 defines respiratory system impairments. Respiratory disorders, along with any associated impairment(s), must be established by medical evidence sufficient enough in detail to evaluate the severity of the impairment. 3.00A. Evidence must be provided in sufficient detail to permit an independent reviewer to evaluate the severity of the impairment. *Id.* A major criteria for determining the level of respiratory impairments that are episodic in nature, is the frequency and intensity of episodes that occur despite prescribed treatment. 3.00C.. Attacks of asthma, episodes of bronchitis or pneumonia or hemoptysis (more than blood-streaked sputum), or respiratory failure as referred to in paragraph B of 3.03, 3.04, and 3.07, are defined as prolonged symptomatic episodes lasting one or more days and requiring intensive treatment, such as intravenous bronchodilator or antibiotic administration or prolonged inhaled bronchodilator therapy in a hospital, emergency room or equivalent setting. 3.00C. Hospital admissions are defined as inpatient hospitalizations for longer than 24 hours. *Id.* Medical evidence must include information documenting adherence to a prescribed regimen of treatment as well as a description of physical signs. *Id.*

Listing 3.02 discusses asthma and provides in relevant part:

* * *

- B. Attacks (as defined in 3.00C), in spite of prescribed treatment and requiring physician intervention, occurring at least once every two 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.

In this case, for the year covering August 2011 through July 2012, the Claimant required physician intervention/hospitalization (breathing treatments and IV steroids) at least 18 times. The Claimant testified credibly, as did his witnesses, that he is unable to afford all of his prescribed treatment. In order to obtain benefits, an individual must follow prescribed treatment if the treatment can restore the ability to work unless good cause exists. 20 CFR 416.930(a)(b). The inability to afford treatment (which the Claimant wants and needs) should not be the sole basis for denying disability. Credible testimony further provided that even when on all the prescribed medications, the Claimant still experiences asthma exacerbations on a regular basis; however, the attacks are fewer. Ultimately, in light of the foregoing, it is found that the Claimant's impairments meet, or are the medical equivalent thereof, a listed impairment within 3.00 as discussed above.

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 –

400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

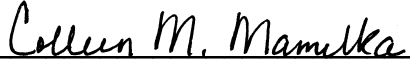
In this case, the Claimant is found disabled for purposes of the MA-P program; therefore, he is found disabled for purposes of SDA benefit program.

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 January 31, 2012 application, retroactive to October 2011, to determine if all other non-medical criteria are met and inform the Claimant and his Authorized Hearing Representative 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 if otherwise eligible and qualified in accordance with Department policy.
4. The Department shall review the Claimant's continued eligibility in accordance with department policy in October 2013.



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

Date Signed: September 27, 2012

Date Mailed: September 27, 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 at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

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cc:

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