

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201249969
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: July 26, 2012
County: Ingham

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. Claimant's request for a hearing was received on May 2, 2012. After due notice, a telephone hearing was held on July 26, 2012. 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 Claimant personally appeared and provided testimony. The Claimant was represented by [REDACTED] of [REDACTED].

ISSUE

Did the Department of Human Services (Department) properly determine that the Claimant did not meet the disability standard for Medical Assistance based on disability (MA-P)?

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 November 7, 2011, the Claimant submitted an application for Medical Assistance (MA) benefits alleging disability.
2. On February 9, 2012, the Medical Review Team (MRT) determined that the Claimant did not meet the disability standard for Medical Assistance (MA-P) because it determined that his impairments do not meet the durational requirement.
3. On February 14, 2012, the Department sent the Claimant notice that it had denied the application for assistance.

4. On May 2, 2012, the Department received the Claimant's hearing request, protesting the denial of disability benefits.
5. On June 11, 2012, the State Hearing Review Team (SHRT) upheld the Medical Review Team's (MRT) denial of Medical Assistance (MA-P) benefits.
6. On December 10, 2012, after reviewing the additional medical records, the State Hearing Review Team (SHRT) again upheld the determination of the Medical Review Team (MRT) that the Claimant does not meet the disability standard.
7. The Claimant applied for federal Supplemental Security Income (SSI) benefits at the Social Security Administration (SSA).
8. The Social Security Administration (SSA) denied the Claimant's federal Supplemental Security Income (SSI) application and the Claimant reported that a SSI appeal is pending.
9. The Claimant is a [REDACTED]-year-old man whose birth date is [REDACTED]. Claimant is 6' 5" tall and weighs 260 pounds. The Claimant is a high school graduate and attended college. The Claimant is able to read and write and does have basic math skills.
10. The Claimant was not engaged in substantial gainful activity at any time relevant to this matter.
11. The Claimant has past relevant work experience in a factory where he was required to operate machinery and required minimal lifting.
12. The Claimant alleges disability due to shortness of breath, back pain, arthritis, hand problems, vision problems, personality changes, mood swings, and posttraumatic stress disorder.
13. The objective medical evidence indicates that the Claimant was treated on an inpatient basis for pneumonia following a loss of consciousness.
14. The objective medical evidence indicates that a magnetic resonance imaging (MRI) scan of the Claimant produced negative results.
15. The objective medical evidence indicates that a computed tomography (CT) scan of the Claimant's head and neck produced negative results.
16. The objective medical evidence indicates that an echocardiogram determined that the Claimant has an ejection fraction of 65%.
17. The objective medical evidence indicates that the Claimant's range of motion is within normal limits and a straight leg test was negative. The

Claimant's muscle tone is normal, his strength was rated at 5/5, and his gait and station are normal. The Claimant is capable of performing deep knee bends.

18. The objective medical evidence indicates that the Claimant suffers from mild back pain.
19. The objective medical evidence indicates that the Claimant is alert and oriented with respect to person, place, and time.
20. The objective medical evidence indicates that the Claimant has been diagnosed with major depressive disorder and polysubstance abuse.
21. The objective medical evidence indicates that the Claimant has been diagnosed with bipolar disorder.
22. The objective medical evidence indicates that the Claimant has been diagnosed with psychogenic amnesia with selective components.
23. The objective medical evidence indicates that the Claimant's affect is appropriate, and his mood is depressed.
24. The objective medical evidence indicates that the Claimant suffered a motor [REDACTED] [REDACTED] on December 23, 2011, and he was diagnosed with a concussion, a closed head injury, and a strain to his cervical spine.
25. The objective medical evidence indicates that the Claimant's mobility is beginning to approach a normal level since the motor vehicle accident.
26. The objective medical evidence indicates that the Claimant has been diagnosed with insomnia, traumatic brain injury, and cervical radiculopathy.
27. The objective medical evidence indicates that the Claimant has a history of amnesia.
28. The objective medical evidence indicates that the Claimant was treated on an inpatient basis following a suicide attempt on February 2, 2012, and was released following treatment on February 9, 2012.
29. The objective medical evidence indicates that on February 3, 2012, the Claimant's social and occupational functioning was seriously impaired and there was an inability to function in almost all areas.
30. The objective medical evidence indicates that the Claimant was discharged from inpatient treatment in improved condition and was found to have serious symptoms and serious impairments in social and occupational functioning.

31. The objective medical evidence indicates that on March 15, 2012 the Claimant was having moderate symptoms and moderate difficulty in social and occupational functioning.
32. The objective medical evidence indicates that on August 24, 2012, the Claimant had major impairments in social and occupational functioning and was unable to work.
33. The objective medical evidence indicates that the Claimant's highest Global Assessment of Functioning level was 55, which indicates that he has moderate symptoms and has moderate difficulty in social and occupational functioning.
34. The objective medical evidence indicates that the Claimant has been diagnosed with tendinopathy of infraspinatus and supraspinatus tendons with 3.2 cm of cystic fluid in the medio-lateral direction at the musculocutaneous junction of the infraspinatus tendon. Minor hypertrophic changes were seen at the acromioclavicular joint.
35. The objective medical evidence indicates that the Claimant has a 1 cm. cyst superficial to his rotator interval.
36. The objective medical evidence indicates that on August 25, 2012, the Claimant was found to be in good condition and capable of any physical activity.
37. The Claimant smokes a pack of cigarettes every three days.
38. The Claimant is a licenses driver and is capable of driving an automobile.
39. The Claimant is capable of preparing meals and shopping for groceries.
40. The Claimant is capable of sweeping floors, wiping counters, and working on cars.
41. The Claimant is capable of walking a mile, sitting for up to 30 minutes, and standing for up to 30 minutes.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901 - 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance has been denied. MAC R 400.903. Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The Medical Assistance (MA) program 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 of Human Services (Department) administers the MA program 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 Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance and State Disability Assistance (SDA) programs. Under SSI, disability is defined as:

...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.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order.

STEP 1

Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is not disabled.

At step 1, a determination is made on whether the Claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

The Claimant is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

STEP 2

Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is not disabled.

At step two, a determination is made whether the Claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the 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 and 416.921). If the Claimant does not have a severe medically determinable impairment or combination of impairments, he is not disabled. If the Claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The Claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months, or result in death.

The Claimant is a 42-year-old man that is 6' 5" tall and weighs 260 pounds. The Claimant alleges disability due to shortness of breath, back pain, arthritis, hand problems, vision problems, personality changes, mood swings, and posttraumatic stress disorder.

The objective medical evidence indicates the following:

The Claimant was treated on an inpatient basis for pneumonia following a loss of consciousness. A magnetic resonance imaging (MRI) scan of the Claimant produced negative results. A computed tomography (CT) scan of the Claimant's head and neck produced negative results. An echocardiogram determined that the Claimant has an ejection fraction of 65%.

The Claimant's range of motion is within normal limits and a straight leg test was negative. The Claimant's muscle tone is normal, his strength was rated at 5/5, and his gait and station are normal. The Claimant is capable of performing deep knee bends. The Claimant suffers from mild back pain.

The Claimant suffered a motor vehicle accident on December 23, 2011, and he was diagnosed with a concussion, a closed head injury, and a strain to his cervical spine. The Claimant's mobility is beginning to approach a normal level since the motor vehicle accident. The Claimant has been diagnosed with insomnia, traumatic brain injury, and cervical radiculopathy.

The Claimant has been diagnosed with tendinopathy of infraspinatus and supraspinatus tendons with 3.2 cm of

cystic fluid in the medio-lateral direction at the musculocutaneous junction of the infraspinatus tendon. Minor hypertrophic changes were seen at the acromioclavicular joint. The Claimant has a 1 cm cyst superficial to his rotator interval.

The Claimant is alert and oriented with respect to person, place, and time. The Claimant has been diagnosed with major depressive disorder and polysubstance abuse. The Claimant has been diagnosed with bipolar disorder. The Claimant has been diagnosed with psychogenic amnesia with selective components. The Claimant's affect is appropriate, his mood is depressed.

The Claimant was treated on an inpatient basis following a suicide attempt on February 2, 2012, and was released following treatment on February 9, 2012. The Claimant has a history of amnesia.

On February 3, 2012, the Claimant's social and occupational functioning was seriously impaired and there was an inability to function in almost all areas. On February 15, 2012, the Claimant was found to have serious symptoms and serious impairments in social and occupational functioning. On March 15, 2012, the Claimant was having moderate symptoms and moderate difficulty in social and occupational functioning. On August 24, 2012, the Claimant had major impairments in social and occupational functioning and was unable to work. The Claimant's highest Global Assessment of Functioning level was 55, which indicates that the Claimant has moderate symptoms and has moderate difficulty in social and occupational functioning.

On August 25, 2012, the Claimant was found to be in good condition and capable of any physical activity. The Claimant smokes a pack of cigarettes every three days. The Claimant is a licensed driver and is capable of driving an automobile. The Claimant is capable of preparing meals and shopping for groceries. The Claimant is capable of sweeping floors, wiping counters, and working on cars. The Claimant is capable of walking a mile, sitting for up to 30 minutes, and standing for up to 30 minutes.

The objective medical evidence of record is not sufficient to establish that Claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more. Therefore, Claimant is found not

to be disability at this step. In order to conduct a thorough evaluation of Claimant's disability assertion, the analysis will continue.

STEP 3

Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4.

At step three, a determination is made whether the Claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the Claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the Claimant is disabled. If it does not, the analysis proceeds to the next step.

The objective medical evidence indicates that the Claimant was treated on an inpatient basis for pneumonia following a loss of consciousness. The objective medical evidence does not support a finding of disability under section 3.00 Respiratory System – Adult.

The Claimant's impairment failed to meet the listing for a back pain under section 1.04 Disorders of the spine, because the objective medical evidence does not demonstrate that the Claimant suffers from nerve root compression resulting in loss of motor strength or reflexes, or resulting in a positive straight leg test. The objective medical evidence does not demonstrate that the Claimant has been diagnosed with spinal arachnoiditis. The objective medical evidence does not support a finding that the Claimant's impairment has resulted in an inability to ambulate effectively.

The Claimant's impairment failed to meet the listing for hand problems under section 1.02 Major dysfunction of a joint because the objective medical evidence does not demonstrate that the Claimant's impairment involves a weight bearing joint resulting in inability to ambulate effectively, or an impairment of an upper extremity resulting in inability to perform fine and gross movements effectively.

The Claimant's impairment failed to meet the listing for arthritis under section 14.09 Inflammatory Arthritis, because the objective medical evidence does not demonstrate an impairment involving a weight-bearing joint and resulting in an inability to ambulate effectively. The objective evidence does not support a finding that the Claimant lacks the ability to perform fine and gross movements with each upper extremity.

The objective medical evidence does not support a finding of disability under section 2.00 Special Senses and Speech.

The Claimant's impairment failed to meet the listing for personality changes under section 12.08 Personality Disorders because the objective medical evidence does not demonstrate that the Claimant has marked restrictions of his activities of daily living,

social functioning, or concentration. The objective medical evidence does not indicate that the Claimant suffers from repeated episodes of decompensation, each of an extended duration.

The Claimant's impairment failed to meet the listing for mood swings under section 12.04 Affective disorders, because the objective medical evidence does not demonstrate that the Claimant suffers from marked restrictions of his activities of daily living or social functioning. The objective medical evidence does not demonstrate that the Claimant suffers from repeated episodes of decompensation or that he is unable to function outside a highly supportive living arrangement.

The Claimant's impairment failed to meet the listing for posttraumatic stress disorder under section 12.06 Anxiety-related disorders, because the objective medical evidence does not demonstrate that the Claimant suffers from marked restrictions of his activities of daily living or social functioning. The objective medical evidence does not demonstrate that the Claimant suffers from repeated episodes of compensation. The objective medical evidence does not demonstrate that the Claimant is completely unable to function outside his home.

When evaluating the Claimant's personality changes, mood swings, and posttraumatic stress disorder, the term repeated episodes of decompensation is defined as periods of extended duration with three episodes within 1 year, or an average of once every 4 months, each lasting for at least 2 weeks. The objective medical evidence indicates that the Claimant was treated on an inpatient basis following a suicide attempt on February 2, 2012, and was released following treatment on February 9, 2012. The objective medical evidence indicates that the Claimant was found to have an inability to function on February 3, 2012, but by March 15, 2012, he was found to have only moderate symptoms and moderate difficulty in social on occupation functioning.

The medical evidence of the Claimant's condition does not give rise to a finding that he would meet a statutory listing in federal code of regulations 20 CFR Part 404, Subpart P, Appendix 1.

STEP 4

Can the client do the former work that he performed within the last 15 years? If yes, the client is not disabled.

Before considering step four of the sequential evaluation process, a determination is made of the Claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(c)). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, the undersigned must consider all of the Claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the a determination is made on whether the Claimant has the residual functional capacity to perform the requirements of his past relevant work (20 CFR 404.1520(f) and

416.920(f)). The term past relevant work means work performed (either as the Claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the Claimant to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the Claimant has the residual functional capacity to do his past relevant work, 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 and last step.

After careful consideration of the entire record, this Administrative Law Judge finds that the Claimant has the residual functional capacity to perform sedentary or light as defined in 20 CFR 404.1567 and 416.967.

The Claimant has a history of past relevant work as a factory worker where he was required to operate machinery that required minimal lifting. The Claimant's prior work fits the description of light work.

There is no evidence upon which this Administrative Law Judge could base a finding that the Claimant is unable to perform work in which he has engaged in, in the past.

STEP 5

At Step 5, the burden of proof shifts to the Department to establish that the Claimant has the Residual Functional Capacity (RFC) for Substantial Gainful Activity.

Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, client is not disabled.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), a determination is made whether the Claimant is able to do any other work considering his residual functional capacity, age, education, and work experience. If the Claimant is able to do other work, he is not disabled. If the Claimant is not able to do other work and meets the duration requirement, he is disabled.

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).

The objective medical evidence indicates that the Claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior employment and that he is physically able to do light or sedentary tasks if demanded of him. The Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments for a period of 12 months. The Claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

The Claimant was able to answer all the questions at the hearing and was responsive to the questions. The Claimant was oriented to time, person and place during the hearing.

The Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to the Claimant's ability to perform work.

Claimant is 42-years-old, a younger person, under age 50, with a high school education and above, and a history of unskilled work. Based on the objective medical evidence of record Claimant has the residual functional capacity to perform sedentary work or light work, and Medical Assistance (MA) is denied using Vocational Rule 20 CFR 202.20 as a guide.

It should be noted that the Claimant continues to smoke despite the fact that his doctor has told him to quit. Claimant is not in compliance with his treatment program. If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that the Claimant was not eligible to receive Medical Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has appropriately established on the record that it was acting in compliance with Department policy when it denied the Claimant's application for Medical Assistance and retroactive Medical Assistance benefits. The Claimant should be able to perform a wide range of light or sedentary work even with his impairments. The Department has established its case by a preponderance of the evidence.

Accordingly, the Department's decision is **AFFIRMED**.

/s/ _____
Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: January 4, 2013

Date Mailed: January 4, 2013

NOTICE: Administrative Hearings 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. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 60 days of the filing of the original request.

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.

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- 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

KS/tb

cc:

