

4. On May 29, 2012, the Department received the Claimant's timely written request for hearing.
5. On July 20, 2012 the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued on September 26, 2012 to obtain new medical evidence and updated medical examinations. The new evidence provided at the hearing was submitted to the State Hearing Review Team on April 19, 2013.
7. On June 24, 2013 the State Hearing Review Team found the Claimant not disabled.
8. The Claimant alleges physical disabling impairments of low back pain, sciatica and radiation to lower extremities, dizziness, cerebral ataxia, loss of balance due to stroke, blurred vision, and vertigo.
9. The Claimant has alleged mental disabling impairments due to depression and bipolar disorder.
10. At the time of hearing, the Claimant was ■■■ years old with a ■■■■■■■■■■ birth date. The Claimant is currently ■■■ years of age. Claimant is 5'10" in height; and weighed 235 pounds.
11. The Claimant has a high school education and attended 3 years of college. The Claimant was licensed as a real estate agent. The Claimant has an employment history working as a restaurant server and real estate sales agent.
12. The Claimant's impairments have lasted or are expected to last 12 months in duration.

CONCLUSIONS OF LAW

The Medical Assistance ("MA") program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, 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 Manual ("BRM").

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 (e.g., 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 impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 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 4 and 5. 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).

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 and, 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 F.2d 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).

The Claimant alleges physical disabling impairments of low back pain, sciatica and radiation to lower extremities, dizziness, and cerebral ataxia, loss of balance due to stroke, blurred vision, and vertigo.

The Claimant has alleged mental disabling impairments due to depression and bipolar disorder.

A summary of the medical evidence follows.

On [REDACTED] Claimant was admitted to the hospital for a 4 day stay. The Claimant presented with dizziness and unstable gait, with leg weakness and dysarthria. The blood alcohol level was 0.22% and urine drug screen was positive for benzodiazepines. He was suspected of cerebral vascular accident and a CT of head and MRI of the head were unremarkable. The history of ischemic stroke was questioned as no evidence of ischemia and test results for MRI and CT did not reveal evidence of ischemia. The patient was seen for dizziness and will need an EMG, audiogram and vestibular rehab. Also seen for depression. A neurological consult was conducted which found most likely a vasodepressor episode. Possible that brief recurrence of labyrinthine dysfunction was the inciting cause. DDX includes mild acute Wernicke encephalopathy and more chronic alcoholic cerebellar degeneration. Another consult determined that patient had chronic intermittent ataxia and lightheadedness. Some degree of psychological amplification of milder organic symptoms may also contribute. Diagnosis was acute or probable chronic cerebellar ataxia and ETOH induced worsening of ataxia. No withdrawal from alcohol during visit. The Claimant's TSH was high due to not taking synthroid for months prior. The Claimant was referred to substance abuse treatment.

The Claimant was admitted for a one day stay on [REDACTED] with chest pain. Claimant stated that he had been having chest pain with pinching pain on left side of chest associated with shortness of breath. No radiation of pain. The notes indicate patient denies any use of alcohol or drugs. The impression was chest pain rule out coronary syndrome. A myocardia; perfusion stress test with Persantine was performed on [REDACTED]. The Impression was normal myocardial perfusion scan, normal cardiac wall motion normal left ventricular ejection fraction of 61%.

A consultative psychiatric examination was conducted on [REDACTED]. The examiner diagnosed the Claimant with bipolar disorder mixed, generalized anxiety disorder with panic attacks. GAF was 50. Prognosis: based upon today's examination and review of records, claimant demonstrated that he has at least average to above average intellectual functioning. He has been primarily affected by a stroke in [REDACTED] up to the present time. He continues to have problems with vision, balance, ambulation, concentration and has back and leg pain with sitting. His overall prognosis is fair to poor at this time.

The Claimant had a consultative medical examination on [REDACTED]. The examiner noted that the patient appears depressed, and gait is ataxic, and use of walker noted. The range of motion for the lumbar spine was not obtained due to the Claimant's fear of becoming nauseated. Conclusions were chronic pain of the lumbar spine region. History of cerebrovascular accident with residual effects of dizziness, vision, balance and cerebral ataxia. Based upon the examination and due to cerebral ataxia and chronic dizziness, balance issues, vision problems as well as loss of motor strength in the bilateral lower extremities, he would likely require restrictions with regards to ambulating, climbing stairs, or being in a seated or standing position for long periods of time. This would likely limit his upper extremities for lifting, pulling, pushing and carrying anything greater than 5 pounds on an occasional basis. He retains to use the fingers in both hands for fine manipulations tasks. There are no restrictions with regards to grip strength in either hand.

The Claimant was seen for an initial evaluation for psychiatric counseling and treatment. At that time the examining psychiatrist diagnosed bipolar disorder mixed, severe, GAF score was 45. There was no mention of drug and alcohol dependence or abuse.

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 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 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.

Listing 1.04 Disorders of the Spine was reviewed and it was found that the Claimant did not meet the listing as no finding of stenosis or radiculopathy was present nor was any

MRI evaluation provided. Listing 12.04 Affective Disorders was also reviewed for Depression, Bipolar and Anxiety. Due to the lack of treatment and severity and absence of documented marked limitations, it was determined that the listing was not met.

The fourth step in analyzing a disability claim requires an assessment of the claimant's 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 are not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s) and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

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 additional 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, e.g., 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 to the demands of past relevant work must be made. *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 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 (e.g., 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.*

The Claimant's prior work history consists of employment performing work as a restaurant server and real estate agent. The restaurant work would be medium unskilled work as the Claimant testified that the food trays served weighed up to 40 pounds and that he was on his feet most of the day. The Claimant's work as a real estate agent also is deemed to be semi-skilled and light work. Both of these jobs required moving about and in the restaurant job standing most of the day.

In light of the Claimant's testimony and records, and in consideration of the Occupational Code, the Claimant's prior work is classified as unskilled, medium work and light semi-skilled work.

The Claimant credibly testified that he can stand 10 minutes due to pain and fatigue, and can sit up to an hour. He has difficulty dressing himself at times and with putting on socks. He gets dizzy bending and can only walk short distances and uses a walker.

The heaviest weight he can carry is 5 pounds. Claimant cannot drive due to dizziness. The Claimant has constant back pain, and with medications pain level is a 3. He cannot bend at waist, cannot squat due to dizziness and feelings of nausea. Based upon the consultative medical examination, many of these symptoms were verified on examination and limitations were imposed as follows. Based upon the examination and due to cerebral ataxia and chronic dizziness, balance issues, vision problems as well as loss of motor strength in the bilateral lower extremities, he would likely require restrictions with regards to ambulating, climbing stairs, or being in a seated or standing position for long periods of time. This would likely limit his upper extremities for lifting, pulling, pushing and carrying anything greater than 5 pounds on an occasional basis. Based upon this objective medical evidence and limitation, the Claimant could no longer perform a job as a restaurant server or real estate agent.

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. In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is not able to return to past relevant work; thus, the fifth step in the sequential analysis is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). The Claimant is [REDACTED] years old and, thus, is considered to be a younger individual for MA purposes. The Claimant has a high school education and several years of college and was licensed as a real estate agent. 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).

In this case the evidence reveals that the Claimant complains of continual back pain and suffers from dizziness and weakness, low back pain, sciatica and radiation to lower extremities, dizziness, cerebral ataxia, loss of balance due to stroke, blurred vision, and vertigo.

The Claimant's mental impairments of depression have existed for some time and he also suffers from anxiety and bipolar disorder. The GAF score is lower between 45 and 50 and the Claimant recently began treatment again in [REDACTED], having ceased treatment due to lack of insurance. The consultative examination prognosis was fair to poor.

In this case the evidence and objective findings reveal that the Claimant suffers low back pain, dizziness and blurred vision, as well as required use of a walker, and suffers from both depression and bipolar disorder which impair him in categories of life activity, both mental and physical. Although evidence of alcohol abuse is referenced on one occasion, the hospital admission on [REDACTED], based upon this evidence alone, it is determined that alcohol abuse is not material to this determination of disability.

The objective medical evidence provided by both the consultative examinations place the Claimant at the less than sedentary activity level. The total impact caused by the physical impairment suffered by the Claimant, his ongoing mental impairments and his constant pain when considered together require a determination that he cannot reasonably be able to sustain substantial gainful employment. In doing so, it is found that the combination of the Claimant's physical impairments and mental impairments have a major impact on his ability to perform and sustain performance of basic work activities. Accordingly, it is found that the Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a). After review of the entire record, and in consideration of the Claimant's age, education, work experience and residual functional capacity it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

It is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

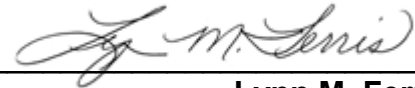
DECISION AND ORDER

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

Accordingly, It is ORDERED:

1. The Department is ordered to initiate processing of the Claimant's MA-P, Retro MA-P and SDA application dated March 16, 2012 and retro application (February 2012) and award required benefits, provided Claimant meets all non-medical eligibility requirements.

2. The Department shall initiate review of the Claimant's disability case in July 2014 in accordance with Department policy.



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

Date Signed: July 23, 2013

Date Mailed: July 23, 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 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

LMF/cl

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