

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

IN THE MATTER OF:

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Reg No.: 2012-65439
Issue No.: 2009
Case No.: ██████████
Hearing Date: October 29, 2012
Wayne County DHS (76)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on Monday, October 29, 2012. The Claimant appeared and testified. Participating on behalf of the Department of Human Services ("Department") was ██████████.

During the hearing, Claimant waived the time frame 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. The SHRT determination which found Claimant not disabled. This matter is now before the undersigned for a final determination.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance ("MA-P") benefit program?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant submitted an application for public assistance seeking MA-P benefits on May 8, 2012.
2. On June 27, 2012, the Medical Review Team ("MRT") found Claimant not disabled. (Exhibit 1, pp. 4, 5)

3. On June 29, 2012, the Department notified Claimant of the MRT determination.
4. On July 18, 2012, the Department received Claimant's timely written request for hearing. (Exhibit 1, pp. 2, 3)
5. On August 24, 2012 and March 11, 2013, the SHRT found Claimant not disabled. (Exhibit 3)
6. Claimant alleged physical disabling impairments due to back pain, left knee pain, right hand pain, hip pain, poor vision, asthma, bronchitis, chest pain, high blood pressure, and headaches.
7. Claimant alleged mental disabling impairment(s) due to anxiety and depression.
8. At the time of hearing, Claimant was 44 years old with a [REDACTED], birth date; was 5'10½" in height; and weighed 180 pounds.
9. Claimant has a limited education with an employment history with a staffing agency assigned to an automotive manufacturer and performed other "odd" jobs related to home construction.

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 applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a). First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental

impairment exists. 20 CFR 416.920a(b)(1). When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2). Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3). The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d). If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR 416.920a(d)(2). If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity 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 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, Claimant alleges disability due to back pain, left knee pain, right hand pain, hip pain, poor vision, asthma, bronchitis, chest pain, high blood pressure, headaches, anxiety, and depression.

On June 21, 2011, a psychiatric evaluation was performed. Claimant presented as evasive/avoidant, withdrawn/distant, suspicious, agitated/restless, paranoid ideations, constricted affect, angry/hostile, and irritable. The diagnoses were bipolar I disorder and developmental and/or learning disorder. The Global Assessment Functioning ("GAF") was 45.

On February 15, 2012, Claimant underwent left knee surgery without complication.

On February 22, 2012, Claimant was admitted to the hospital with complaints of abdominal pain, nausea, and vomiting. Claimant was treated and discharged on February 25th with the diagnoses of gastroenteritis, bilateral adrenal mass versus renal cyst, and polysubstance abuse secondary to essential hypertension and asthma (mild/intermittent).

On March 20, 2012, Claimant attended an appointment following his knee surgery. The incisions were healing with positive moderate effusion. The range of motion was 0 to 50 degrees. Due to the lack of insurance, Claimant was unable to participate in physical therapy.

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On May 1, 2012, Claimant presented to the emergency room with complaints of abdominal pain, nausea, and vomiting.

On May 16, 2012, Claimant was diagnosed with bipolar I disorder and intermittent explosive disorder. The GAF was 40.

On May 23, 2012, Claimant presented to the emergency room with complaints of abdominal pain and vomiting. Claimant was discharged on May 25th with the diagnosis of acute gastroenteritis.

On May 28, 2012, Claimant presented to the hospital with complaints of nausea, vomiting, and acute abdominal pain. Claimant was positive for H pylori. Claimant was treated and discharged with the diagnoses of acute gastritis secondary to H pylori infection, intractable nausea and vomiting secondary to cannabinoid hyperemesis syndrome, benign essential hypertension, asthma, and tobacco abuse.

On September 5, 2012, an Eye Examination Report was completed on behalf of Claimant. The diagnosis was congenital myopia, bilaterally. Claimant's uncorrected vision was 20/400 in both eyes and 20/20 with correction. Claimant's visual fields were not constricted.

On September 29, 2012, Claimant sought treatment via the emergency room for left knee pain.

On December 14, 2012, Claimant attended a consultative evaluation. The physical examination revealed flexion of the left knee from about 0 to 50 degrees, extension fully to 0 degrees, full range of motion in both ankles and wrists, and no upper or lower extremity muscular atrophy. The diagnosis was left knee injury status post surgery, hypertension (elevated blood pressure), bipolar disorder, right wrist lump of uncertain etiology, paroxysmal wheeze, frequent heartburn, and blood in stool. Claimant was found to have difficulties with prolonged standing and walking as well as with squatting and climbing stairs. Claimant required an assistive device for walking to reduce pain.

On this date, a Medical Examination Report was completed on behalf of Claimant. The current diagnoses were left knee pain status post surgery (February 2012), hypertension, bipolar disorder, asthma, and renal lesions of unknown significance. Claimant was found able to stand and/or walk at least 2 hours noting a steady gait with the use of a cane. Claimant was able to perform repetitive actions with his upper extremities and operate foot/leg controls with his right leg. Mentally, there were no limitations and Claimant was found able to meet his needs in the home.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some medical evidence establishing that he does have some physical and mental limitations on his ability to perform basic work activities. The degree of functional limitation on the Claimant's activities, social function, concentration, persistence, or pace is mild to moderate. The degree of functional limitation in the fourth area (episodes of decompensation) is at most a 1 noting continuing improvement in GAF scores. Ultimately, the medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms treatment/diagnoses of bipolar I disorder, left knee pain (post surgery) with reduced range of motion, gastroenteritis, bilateral adrenal mass, asthma, polysubstance abuse, asthma, intermittent explosive disorder, acute gastritis secondary to H pylori infection coupled with vomiting and nausea, and congenital myopia bilaterally.

Listing 1.00 (musculoskeletal system), Listing 2.00 (special senses and speech), Listing 3.00 (digestive system), Listing 4.00 (cardiovascular system), Listing 5.00 (digestive system), Listing 9.00 (endocrine disorders), Listing 12.00 (mental disorders) were considered in light of the objective medical evidence. There was no evidence of joint space narrowing, bony destruction, ankylosis, or unhealed fracture. The evidence does not establish statutory blindness as Claimant's visual field with the use of corrective lenses is 20/20. There was no evidence of a severe cardiac impairment or evidence of end organ damage as a result of Claimant's hypertension. From February through May 2012, Claimant was treated for ongoing abdominal pain, nausea, and vomiting. In May 2012, Claimant tested positive for H pylori infections and was treated. Since then, there were no further treatments for these issues. Additionally, there was no evidence to establish Claimant's BMI was less than 17.50 on at least two evaluations at least 60 days apart within a 6 month consecutive period. The evidence does not meet the intent or severity requirement of an endocrine disorder. Mentally, there was no evidence of marked restrictions in any functional area. In light of the foregoing, Claimant cannot be found disabled or not disabled at Step 3.

Before considering the fourth step in the sequential analysis, a determination of the individual's residual functional capacity ("RFC") is made. 20 CFR 416.945. An individual's RFC is the most he/she can still do on a sustained basis despite the limitations from the impairment(s). *Id.* The total limiting effects of all the impairments, to include those that are not severe, are considered. 20 CFR 416.945(e).

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity with the demands of past relevant work. *Id.* If an individual can no longer do past relevant work the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of

work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

In this case, the evidence confirms treatment/diagnoses of bipolar I disorder, left knee pain (post surgery) with reduced range of motion, gastroenteritis, bilateral adrenal mass, asthma, polysubstance abuse, asthma, intermittent explosive disorder, acute gastritis secondary to H pylori infection coupled with vomiting and nausea, and congenital myopia bilaterally. The objective medical findings found Claimant to have some difficulties with prolonged standing and walking as well as with squatting and climbing stairs. Claimant was found able to stand and/or walk at least 2 hours in an 8 hour workday. Mentally, there were no limitations. After review of the entire record to include the Claimant's testimony, it is found that the Claimant maintains the residual functional capacity to perform at least unskilled, sedentary work as defined by 20 CFR 416.967(b).

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3).

Claimant's prior work history consists of work with a staffing agency where he was assigned to an automotive manufacturer for a couple of months. Claimant also performed other "odd" jobs related to home construction. In light of the Claimant's testimony and in consideration of the Occupational Code, the Claimant's prior work assignment is considered unskilled light work while his home reconstruction "odd" jobs are classified as unskilled to semi-skilled, light to medium work. If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920. In light of the entire record and the Claimant's RFC (see above) and in consideration of the vision loss, it is found that the Claimant is unable to perform all the duties of his past relevant work.

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). At the time of hearing, the Claimant was 44 years old thus considered to be a younger individual for MA-P purposes. The

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

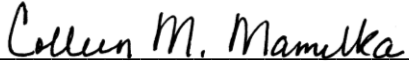
In this case, evidence confirms treatment/diagnoses of bipolar I disorder, left knee pain (post surgery) with reduced range of motion, gastroenteritis, bilateral adrenal mass, asthma, polysubstance abuse, asthma, intermittent explosive disorder, acute gastritis secondary to H pylori infection coupled with vomiting and nausea, and congenital myopia bilaterally. The noted limitations are consistent with sedentary activity. After review of the entire record, and in consideration of the Claimant's age, education, work experience, and RFC, finding no contradiction with any non-exertional impairment, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rules 201.24, it is found that the Claimant is not 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 not disabled for purposes of the MA-P benefit program.

Accordingly, It is ORDERED:

The Department's determination is AFFIRMED.



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

Date Signed: June 24, 2013

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Date Mailed: June 24, 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.

CMM/cl

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