

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012 69166
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: November 28, 2012
County: Oakland (03)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. After due notice, an in-person hearing was held on November 28, 2012. The Claimant appeared and testified. [REDACTED] appeared as the Claimant's Authorized Hearing Representative. [REDACTED], ES, appeared and testified on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was no longer disabled for purposes of the Medical Assistance ("MA-P) benefit program?

FINDINGS OF FACT

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

1. Claimant applied for MA -P and SDA on November 8, 2011 and retro MA-P to October 2011.
2. On May 11, 2012, the Medical Review Team (MRT) determined that the Claimant was not disabled. (Exhibit 1)
3. On July 3, 2012, the Department notified the Claimant of the MRT determination. (Exhibit 1)
4. On August 1, 2012, the Department received the Claimant's timely written request for hearing. (Exhibit 1)

5. On September 19, 2012, the State Hearing Review Team (SHRT) found the Claimant not disabled. (Exhibit 2)
6. Claimant alleged physical disabling impairments due to chronic lower back pain, and a history of L1-L5 fusion, sciatica in his right leg, neuropathy in both legs and feet, arthritis in left hip, and shortness of breath.
7. The Claimant has alleged he suffers from a mental disabling impairment due to anxiety.
8. Claimant was [REDACTED] years of age with a [REDACTED] birth date on the date of the hearing; was 6'2" and weighed approximately 180 pounds.
9. The Claimant has a high school education and one year of college.
10. The Claimant is not currently working.
11. Claimant has a prior work history consisting of contract employment in CAD design of engines and transmissions for a ten year period. The Claimant also worked for excavating companies laying pipe for water and sewer lines. In this position the Claimant operated a back hoe and cement mixer. The Claimant also worked as a steward for a hotel kitchen washing dishes, taking out the garbage and mopping floors.
12. In [REDACTED] claimant sustained a work-related injury to his back while working in construction.

CONCLUSIONS OF LAW

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 (DHS or 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 Bridges Reference Manual (RFT).

Federal regulations require that the Department use the same operative definition of the term "disabled" as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

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

This is determined by a five step sequential evaluation process including whether the Claimant is engaged in current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five step sequential evaluation, and when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920

The first step that must be considered is whether the claimant is still participating in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. In the current case, as outlined above, the first step looks at the individual's current work activity. In the record presented Claimant has testified that he is not working, and is not involved in substantial gainful activity and therefore is not ineligible for disability benefits under Step 1.

The second step that must be considered is whether or not the claimant has a severe impairment. 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. A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual's physical or mental ability to perform basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). The impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). The term "basic work activities" means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples of these 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. 20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. This is a *de minimus* standard in the

disability determination that the court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, Claimant has presented medical evidence, a summary of which follows.

A discharge summary from an [REDACTED] admission noted Claimant was admitted with dehydration and alcohol withdrawal. Claimant had alcoholic pancreatitis with persistent elevated Lipase. Problem list noted anxiety, at risk for falls, at risk for impaired skin integrity, at risk for impaired tissue integrity, excessive alcohol consumption, Hypertension and tremor were all confirmed. The final impression and plan indicated hypotension secondary to intravascular depletion – resolved, dehydration resolved, alcohol abuse/addiction, acute pancreatitis possibly alcohol related, acute kidney injury resolved, cholelithiasis with pericholecystic fluid, hypomagnesemia resolved. The Claimant's stay lasted 13 days and was discharged for follow up with PCP and Gastroenterology. During this stay the following tests were conducted, x-ray chest, impression normal with borderline cardiomegaly (enlarged heart) Ultrasound abdomen, impression was cholelithiasis with interval development of small amount of fluid, evidence of inflammatory changes in pancreas, no pseudocyst or abscess; liver scan exam, impression: normal hepatobiliary scan and gallbladder ejection fraction; CT scan of abdomen, small bilateral pleural effusions greater on left, density within the neck of gall bladder unchanged could represent gall stone, small right renal cyst unchanged.

The Claimant was also admitted to the hospital on [REDACTED]. The Claimant was admitted after tripping and falling complaining of rib pain and shortness of breath. Testing showed mild vascular congestion. An x-ray of the chest and lungs indicated no active process. Tremors due to alcohol were noted. Back pain bilaterally noted as mild. The discharge diagnosis was alcohol withdrawal, sepsis, hypomagnesemia, thrombocytopenia, history of tremors, anemia, and tobacco abuse. Chronic low blood pressure, community acquired pneumonia. The patient was given antibiotics and discharged in stable condition, prognosis fair. The Claimant was hospitalized for 8 days.

On [REDACTED] a mental status consultative examination was held. At the time of the exam the claimant was homeless living in tent city located in Walled Lake, Michigan. The Claimant presented with strong body odor, hygiene was poor. The examiner reported the Claimant appeared in denial about his substance abuse (alcohol) and has some difficulty with concentration and persistence, and memory was intact. The diagnosis was alcohol dependence and personality disorder. Prognosis was poor and the GAF score was 51 – 60.

The Claimant was admitted to the hospital on [REDACTED] and was discharged 8 days later. The admitting diagnosis was alcohol abuse, bronchitis and chest pain. The diagnosis at discharge was the same. The Claimant was treated for alcohol withdrawal and the DT's. The records note that the basic problem is that the patient is an end

stage alcoholic. Prognosis was poor. As regards the chest pain the exam found no evidence of acute coronary syndrome. The impression was acute DT's .

The Administrative Law Judge finds that the Claimant's medical evidence as summarized above presents sufficient objective medical evidence to substantiate the alleged disabling impairment(s), 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 impairment has lasted continuously for twelve months; therefore, the Claimant is not disqualified, and is therefore enough to pass step two of the sequential evaluation process.

In the third step of the sequential evaluation, the trier of fact must determine if the Claimant's impairments, or combination of impairments is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This is, generally speaking, an objective standard; either claimant's impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of "not disabled"; if the claimant's impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that the claimant's medical records do not contain medical evidence of an impairment that meets or equals a listed impairment. Listing 1.00 Musculoskeletal System, Listing 1.04 (disorders of the spine), as well as listing 12.06 Anxiety Related Disorders; 12.08 Personality Disorders and 12.09 Substance Addiction Disorders were reviewed and analyzed in light of the medical evidence.

The structure of the listing for substance addiction disorders, 12.09, is also different from that for the other mental disorder listings. Listing 12.09 is structured as a reference listing; that is, it will only serve to indicate which of the other listed mental or physical impairments must be used to evaluate the behavioral or physical changes resulting from regular use of addictive substances. In this case as the Claimant's mental and physical impairments did not meet any of the above referenced listings examined by the undersigned, thus the listing 12.09 was not met.

Claimant's testimony of his medical impairments, both physical and mental, requires support by objective medical evidence. It must establish the existence of a medically determinable impairment(s) of the required duration by medical evidence consisting of symptoms, signs, and laboratory findings (including psychological test findings). Symptoms are your own description of your physical or mental impairment(s). In this case the medical evidence was insufficient to support the symptoms and complaints cited by the Claimant. No new medical evidence was presented or requested by the Claimant or his Authorized Hearing Representative.

Ultimately, based on the medical evidence, it is found that the Claimant's impairments do not meet the intent and severity and specific requirements of a listed impairment. Therefore, the Claimant cannot be found to be disabled at this third step, based upon

medical evidence alone. 20 CFR 416.920(d). We must thus proceed to the next step, step 4 in the sequential evaluation.

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 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 e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) 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 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 as contract employee in CAD design of engines and transmissions for a ten year period for the auto industry. The Claimant also worked for excavating companies laying pipe for water and sewer lines. In this position the Claimant operated a back hoe and cement mixer. The Claimant also worked as a steward for a hotel kitchen washing dishes, taking out the garbage and mopping floors. In light of the Claimant's testimony and records, and in consideration of the Occupational Code, the Claimant's prior work is classified as semi-skilled medium to heavy work.

The Claimant testified that he is able to walk about a block, lift/carry 5 pounds; and that he can stand for short periods 15 to 20 minutes, sit for about 20 to 30 minutes; and is unable to bend and/or squat. The objective medical evidence places that Claimant at mild to moderate activity. This evaluation is based upon past surgery for his injuries associated with his hip and back which were testified to by the Claimant, although no medical records past or current were supplied regarding the Claimant's spinal fusion and hip injury due to a work related accident. The medical evidence however, does not contain any physical restrictions placed upon the Claimant by his doctors or at any of the hospital examinations but does note tremors, some associated with alcohol and possibly other causes which would make claimant unable to perform CAD design work. All musculoskeletal exams while hospitalized indicated no limitation of motion. 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 49 years old and, thus, is considered to be of younger individual for MA-P purposes. The Claimant has a high school degree and one year of college with training in auto CAD design which he has not done for many years. 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 suffers from alcohol abuse and low back pain with repeated admissions for alcohol-related symptoms and other physical conditions which stabilize after hospitalization. The medical records were devoid of any findings regarding recent evaluation of the Claimant's spinal fusion or any evaluation of his physical limitations and as noted above. It is also noted that Claimant's numerous hospitalizations where complaints of low back pain were made did not indicate any notes regarding his back pain and did note normal range of motion to be present in the Musculoskeletal evaluations. The Claimant's testimony described that he experienced pain with his back and other ailments however no objective medical evidence supported the limitations which he testified to. The Claimant further described limitation of range of motion and inability to walk, sit or stand which were not supported by the objective medical evidence. In consideration of the foregoing and in light of the objective limitations, it is found that the Claimant retains the residual functional capacity for work activities on a regular and continuing basis to meet all the physical and mental demands required to perform sedentary work in 20 CFR 416.967(b).

The degree and severity of the Claimant's conditions complained of are not supported by the objective medical evidence presented. After review of the entire record, the testimony of the Claimant and the medical evidence and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.21, 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 upon the above findings of fact and conclusions of law, decides that the Claimant is not disabled for the purposes of the MA program. Therefore, the Department's decisions to deny Claimant's application for MA-P were correct.

Accordingly, the Department's decision in the above stated matter is, hereby, AFFIRMED.


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

Date Signed: December 19, 2012

Date Mailed: December 19, 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

2012-69166/LMF

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cc:

