

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012 51772
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 27, 2012
DHS County: Wayne County (82)

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 the Claimant's request for a hearing. After due notice, a telephone hearing was held in Detroit, Michigan, on August 27, 2012. The Claimant appeared and testified. [REDACTED] E.S., appeared on behalf of the Department of Human Services ("Department").

ISSUE

Whether the Department properly determined that the 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. The Claimant submitted an application for public assistance seeking Medical Assistance (MA-P) and Retro MA-p (April 2012) benefits on May 15, 2012
2. On May 22, 2012 , the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1)
3. The Department notified the Claimant of the MRT determination on May 31, 2012.
4. On May 31, 2012 Department received the Claimant's timely written request for hearing.

5. On July 12, 2012 the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued on August 29, 2012 ordering that the Department obtain additional medical information and review.
7. The Medical Evidence was submitted to the State Hearing Review Team on 10/23/12 and on 12/05/12 the SHRT found the Claimant not disabled.
8. The Claimant alleged physical disabling impairments due degenerative disc disease with low back pain and a shoulder tear and recent facial bone fracture and orbital bone fracture.
9. The Claimant has alleged mental disabling impairment(s) including major depression, anxiety , panic attacks with agoraphobia, mood disorder and post traumatic stress disorder
10. At the time of hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth dates. The Claimant was ” 5’7” in height; and weighed 155 pounds.
11. The Claimant has a high school diploma and completed one year of college. The Claimant’s employment has consisted of sales selling non alcoholic beverages, warehouse work, hospital billing and inventory delivery of surgical equipment, and warehousing of auto parts hand pulling and selecting various auto parts.

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).

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 are 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.*

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 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).

The Claimant has alleged physical impairments due to degenerative disc disease with low back pain and a shoulder tear as well as an injury causing a facial fracture and orbital bone fracture.

The Claimant alleges mental disabling impairment due to major depression, anxiety, panic attacks with agoraphobia, mood disorder and post traumatic stress disorder.

The summary of the Claimant's medical evidence follows.

A consultative physical examination was conducted on [REDACTED] which noted the following impression; depression and anxiety noting treatment and medication for his mental health concerns. Back pain noted chronic pain no use of cane or back brace and not taking medications for back pain and notes complaint of neuropathy in upper and lower extremities. Based upon the history and the exam, the examinee should avoid toxins, fumes, smoke and dust including cigarette smoke and alcohol. He needs ongoing care for his mental health concerns. He may have difficulty with repetitive bending, pushing, pulling and lifting. In conjunction with the examination an x-ray of the lumbar spine noted an impression of minimal degenerative osteoarthritic changes of the lumbar spine, minimal spina bifida of S1.

A consultative psychiatric examination was conducted on [REDACTED]. The diagnoses were poly substance dependence, (opiates, alcohol, benzodiazepines per record in chart). The report noted that substance abuse was several months in remission. Adjustment disorder with mixed emotional features. GAF score of 51. The examiner states that in light of his history of substance dependence, not capable of managing his own benefit funds. Based on the examination claimant demonstrated moderate capacity to concentrate as evidenced by performance on calculational tasks, slight to moderate strengths in immediate memory and the capacity to pay attention. Generally intact capacity for abstract thinking and adequate judgment and impulse control. Capable of engaging in work type activities of a moderate degree of complexity, remembering and executing a several step procedure on a sustained basis best suited to tasks requiring little if any independent judgment or decision making. Prognosis was fair.

The Department attempted to obtain medical records of a hospital admission in [REDACTED] and the Mobile Infirmary in [REDACTED] but was unable to obtain a medical release from the Claimant.

A Mental Residual Functional Capacity Assessment was performed by [REDACTED] on [REDACTED] which indicated that the Claimant was markedly limited in one of 20 categories which was his ability to maintain attention and concentration for extended periods. The Claimant was evaluated as not significantly limited in his abilities to remember locations and work like procedure, understand and remember one or two step instructions; ability to carry out simple one and two step instructions; ability to perform activities within a schedule, maintain regular attendance; ability to make simple work related decisions; ability to ask simple questions or request assistance, ability to maintain socially appropriate behavior and basic standards of neatness and ability to be aware of normal hazards and take appropriate precautions.

An evaluation by [REDACTED] staff therapist also completed a mental residual functional assessment on [REDACTED]. The Claimant was again found markedly limited in one category, the ability to make plans independently of others and to set realistic goals. The remainder of the evaluation indicated no evidence of limitation in several categories (5) and not significantly limited in 5 categories and moderately limited in the remainder of the evaluation.

An initial psychological assessment was completed by [REDACTED] on [REDACTED]. The diagnosis at initial evaluation was panic disorder, with agoraphobia, mood disorder; major depressive disorder severe without psychotic features.

The Claimant was admitted to the hospital on [REDACTED] for a four day stay. The admission was due to being struck in the head and robbed with complaints of headache, nausea, blurry vision, neck pain and a throbbing pain (pain level 9 out of 10) on right side of his head. The Claimant was monitored and treated for the DT's. The Claimant was discharged in stable condition with arrangement to go to Emmanuel House for inpatient substance abuse rehab. The Claimant did have a facial fracture and orbital wall fracture which required follow up. The report noted vertebral body compression deformities of a mild to moderate degree in the lumbar spine which may be due to lumbar disc disease and or compression deformities related to osteopenia.

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. The Claimant has alleged physical impairments due to chronic lumbar and cervical back pain and rotator cuff impingement syndrome, bilateral and arthritis. The Claimant has alleged mental disabling impairments of schizoaffective disorder and bipolar disorder.

Listings regarding 1.00 Musculoskeletal System, specifically Listing 1.04 Disorders of the Spine and Mental Disorders and 12.04 Affective Disorders (depression), 12.06 Anxiety Related Disorders, and 12.09 Substance Addiction Disorders were reviewed and considered based upon the available medical evidence. It was determined that none of the listings were met and thus the Claimant is found not disabled at Step 3 and thus analysis of disability under Step 4 is required.

The fourth step in analyzing a disability claim requires an assessment of the claimant's residual function capacity (RFC) and past relevant work. 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 consisted of sales selling non alcoholic beverages, warehouse work, hospital billing and inventory delivery of surgical equipment, and warehousing of auto parts selecting various auto parts from the shelves in the inventory.

Claimant's past relevant work was semi skilled and the rigor of his work is characterized as medium work. 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 work.

The Claimant credibly testified that he is able to walk approximately one quarter mile, stand for 30 to 45 minutes and sit for up to an hour to one and a half hours. The Claimant has problems with lifting heavy weight, cannot squat, and indicated that he could lift/carry 10 pounds. The Claimant's abilities were also restricted by the consultative physical examination as set forth earlier in this opinion which found based upon the history and the exam, the examinee should avoid toxins, fumes, smoke and dust including cigarette smoke and alcohol. He needs ongoing care for his mental health concerns. He may have difficulty with repetitive bending, pushing, pulling and lifting. As regards the Claimant's mental impairments the Claimant was found capable of engaging in work type activities of a moderate degree of complexity, remembering and executing a several step procedure on a sustained basis is best suited to tasks requiring little if any independent judgment or decision making. Other examiners also found Claimant not significantly limited and in some areas not limited in various functions as referenced in detail above.

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 41 years old and, thus, is considered to be younger individual for MA purposes. The Claimant attended school through the high school with one year of college. 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 suffers physical disabling impairments and mental disabling impairments. His physical impairments are due to degenerative disc disease with low back pain and a shoulder tear and recent facial bone fracture and orbital bone fracture. The Claimant has alleged mental disabling impairment(s) including major depression, anxiety, panic attacks with agoraphobia, mood disorder and post traumatic stress disorder.

The total impact caused by the combination of medical problems suffered by the Claimant must be considered. In so doing, it is found that the combination of the Claimant's physical and mental impairments have a major effect on his ability to perform basic work activities. In light of the foregoing, it is found that the Claimant maintains the residual functional capacity for work activities on a regular and continuing basis includes the ability to meet the physical and mental demands required to perform sedentary work as defined in 20 CFR 416.967(a). After review of the entire record 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.

In this case, the Claimant is found not disabled for purposes of the MA-P program.

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.

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



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

Date Signed: December 28, 2012

Date Mailed: December 28, 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.

2012-51772/LMF

Request must be submitted through the local DHS office or directly to MAHS by mail to:

Re Michigan Administrative Hearings
consideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

LMF/tm

cc:

