

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

IN THE MATTER OF:



Reg. No.: 2012-75068
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: December 18, 2012
County: Oakland-02

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon Claimant's request for a hearing made pursuant to Michigan Compiled Laws 400.9 and 400.37, which govern the administrative hearing and appeal process. After due notice, a telephone hearing was commenced on December 18, 2012, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED] [REDACTED]

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P) and Retro-MA?

FINDINGS OF FACT

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

- (1) On June 20, 2012, Claimant filed an application for MA-P and Retro-MA benefits alleging disability.
- (2) On August 13, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that Claimant was capable of performing other work based on his non-exertional impairment. (Depart Ex. A, pp 1-2).
- (3) On August 15, 2012, the department caseworker sent Claimant notice that his application was denied.
- (4) On August 27, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On October 23, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform simple and repetitive tasks. The evidence does not support the presence of severe physical limitations. (Depart Ex. B, pp 1-2).
- (6) Claimant has a history of lower back pain, asthma, cannabis dependence, bipolar disorder, hearing voices, and alcohol dependence.
- (7) Claimant is a 36 year old man whose birthday is [REDACTED] Claimant is 5'6" tall and weighs 170 lbs. Claimant completed the eighth grade. Claimant lives in an adult foster care home.
- (8) Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

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, (DHS or department), 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 Reference Tables Manual (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 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 an 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, Claimant is not involved in substantial gainful activity and testified that he has not worked since 2005 or 2006. Therefore, he is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual 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).

In the present case, Claimant alleges disability due to lower back pain, asthma, cannabis dependence, bipolar disorder, hearing voices, and alcohol dependence.

On May 1, 2011, Claimant underwent a comprehensive assessment annual update at [REDACTED]. Claimant has an 11th grade education and is currently residing in an Adult Foster Care (AFC) home. He has a history of using alcohol and marijuana and has been abstinent. He has a long history of mental illnesses which started at age 17, characterized by having episodes of feeling very happy, very energetic then very depressed with irritability, racing thoughts and problems concentrating. When angry, he is sometimes verbally abusive. He started hearing voices in 2005 when nobody was around and has been hearing them on and off since then. He is currently on Seroquel, Remeron, Trazodone and Depakote. He has been doing better. Mood swings are still present but better. He has been feeling depressed lately but less with his medications. He is still not sleeping well. He is still hearing voices when alone. He hears people crying or moaning and sometimes thinks people are out to get him. Medical history shows that he is being treated for pain in his low back and asthma. During the interview, he is friendly and cooperative. He is alert and oriented to 3 spheres. His affect appears sad and mood is depressed. He is still having auditory hallucinations but better. He is still having paranoid thoughts, but less. No suicidal thoughts or plans. He has some insight into his mental illnesses. Will continue Depakote but increase dose to further stabilize his mood. Continue Seroquel but increase dose for his psychosis. Continue Remeron and Trazodone for his depression. Claimant's case worker opined that Claimant continued to require a supervised living arrangement to assist with medication to insure daily compliance and ongoing compliance with his individual needs of care.

On April 25, 2012, during the psychiatric evaluation at [REDACTED] Claimant states, "I can't sleep and I hear voices." He is appropriately dressed with good grooming and hygiene. His speech is logical and goal directed. He states that he hears voices

telling him, "you can do better, you can do more with your life," and also, " don't go to sleep because you might not wake up." He continues to live at an adult foster care, stating that he is not having any problems there and "it's better than being homeless." He denies depressed mood, denies mood swings, denies anger/irritability, and denies suicidal or homicidal ideations. He has a long history of mental illness beginning at age 17 with symptoms of mood swings, racing thoughts, irritability, anger, violence, and auditory hallucinations. He was incarcerated from 2003 to 2005 for assault with intent to do great bodily harm less than murder. He has had 3 psychiatric hospitalizations, the last being in 2006. He also has a long history of alcohol and marijuana abuse, which is now in full remission. He is compliant with treatment and has a good response to medication with some residual auditory hallucinations and insomnia. Diagnosis: Axis I: Bipolar disorder, most recent episode depressed, severe; Alcohol dependence; Cannabis dependence; Axis III: Asthma; Low back pain; Axis IV: Occupational problems, economic problems, other psychological and environmental problems; Axis V: GAF=48.

On June 26, 2012, Claimant met with his case manager at [REDACTED]. He remains on Probation and must follow up with his assigned officer every month. At present, Claimant is involved in [REDACTED]. As for general activities, he reportedly enjoys going for walks, using public transportation, taking care of his personal business, reading, watching TV and going to church. He has been a resident of the adult foster care home since 3/26/09. He appears to be satisfied with the adult foster care home for now, but looks forward to living independently in the future. He has a history of asthma and back problems. He has been seen at least twice through emergency for asthma attacks this year.

On July 9, 2012, Claimant underwent a medical evaluation by the [REDACTED]. Claimant was brought to the evaluation by staff of the adult foster care where he resides. He has lived in the adult foster care home for the past three years due to mental problems. Claimant was evaluated for asthma, bronchitis, sinus problems, back pain, and bipolar disorder. He stated he has had asthma and bronchitis for 12 years. He has also been a smoker for a long time. He has been using two different inhalers. No nebulizer so far. He was hospitalized 3 to 4 times for wheezing problems and asthma problem with multiple flare-ups. His last admission was December, 2011, for asthma flare-ups and bronchitis. Claimant stated that last year he was cleaning gutters and fell, injuring his back. He has been taking Vicodin, Flexeril, and Naproxen for pain management. He has lower back pain with spasms and stiffness off and on. The pain is non-radiating in nature. He stated that he cannot lift more than 20 to 25 pounds. He cannot walk for a prolonged time. Bending, twisting, and climbing stairs make his back pain worse. There is no tenderness in the lumbosacral spine. Pedal pulses are 2+ bilaterally. He has mild restriction of range of motion in the shoulders. He has moderate restriction of range of motion in the lumbar spine. Grip is adequate in both hands. He is able to get up from the chair and table without assistance. No paravertebral spasm is noted. Deep tendon reflexes are within normal limits in the upper and lower extremities. Straight leg raising is negative to 90 bilaterally, and Patrick's is bilaterally negative as well. Heel walk, toe walk, tandem walk, Romberg, finger to nose testing, squatting and recovery from squatting are all fairly well done. His gait is stable and within normal limits. Gross and fine dexterity

appear bilaterally intact. He is alert and oriented. His speech is normal. Higher functions are normal. Memory is good. The examining physician opined that Claimant has physical and functional capacity for standing, walking and sitting for 6-8 hours per day with frequent rests and interruptions secondary to his lower back pain and asthma. Diagnosis: chronic asthmatic bronchitis, steroid dependent, mild to moderate in intensity; chronic sinusitis; chronic lumbar myositis after a fall last year; and eye polar disorder by history.

On July 9, 2012, Claimant underwent an adult mental status evaluation by the [REDACTED] [REDACTED]. Claimant was alleging disability due to bipolar disorder. The supportive documentation included a psychiatric report dated 2011 and an SSI evaluation with no date. Claimant resides in an AFC home with six residents and gets along there fairly well. His appetite is good. His sleep is poor. He reports doing light housekeeping and shopping. He attends church. He cooks simple meals. He does not drive or do yard work. He cashes checks. He does not pay bills. He completes his own grooming and hygiene. He takes walks and exercises. He reads and watches TV. He can wash clothes. He does not play video games. He can complete errands. He has no experience making his own medical appointments. He can call 911. Most of his activities of daily living are performed by Adult Foster Care home staff. Claimant completed the ninth grade with special education. He reports inpatient treatment at [REDACTED] [REDACTED] in 2006 for bipolar disorder. He responds to questions well. He responds to positive criticism well. He requires no special assistance to complete the examination process. Overall, he is cooperative, motivated, verbally responsive, attempts all tasks and works diligently. Eye contact is good. Thoughts are logical, organized, simple and concrete. The content of communication is age appropriate. His mood is euthymic. His contact with reality is good. His motor activity is within normal limits. He did not appear to engage in any exaggeration or minimization of symptomology. His affect is pleasant and friendly. He reports auditory hallucinations beginning in 2008 and occurring two nights a week. When asked what the voices say, he reports, "I need to get ready for church, that I can do better." He cannot identify the voices. He denies any visual hallucinations. He is able to manage benefit funds, if awarded. Overall, he is verbal, pleasant and smiles appropriately. There is no apparent mood disorder. He has no difficulty comprehending and carrying out simple directions. He has no difficulty performing repetitive, routine, and simple tasks. He has moderate difficulty getting along appropriately with supervisors. He has moderate difficulty creating and maintaining good working relationships. Diagnosis: Axis I: Bipolar disorder with psychosis, most recent depressed; Alcohol dependence in remission; Cannabis dependence in remission; Learning disability by report; Axis II: Deferred: Axis IV: Economic, Claimant not working; Social support good, limited; Relationships fair, limited; Judgment and behavior within normal limits on medication; Insight is fair; ADLs are fair; Axis V: GAF=65.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Claimant has presented some limited medical evidence establishing that he does have some physical and mental limitations on his ability to perform basic work activities. The medical evidence has established that Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on Claimant's basic work activities.

Further, the impairments have lasted continuously for twelve months; therefore, 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 individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Claimant has alleged physical and mental disabling impairments due to lower back pain, asthma, cannabis dependence, bipolar disorder, hearing voices, and alcohol dependence.

Listing 1.00 (musculoskeletal system), Listing 3.00 (respiratory system), and Listing 12.00 (mental disorders), were considered in light of the objective evidence. Based on the foregoing, it is found that Claimant's impairment(s) does not meet the intent and severity requirement of a listed impairment; therefore, Claimant cannot be found disabled at Step 3. Accordingly, Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the individual'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) 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 functioning 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.*

Claimant has a history of less than gainful employment. As such, there is no past work for Claimant to perform, nor are there past work skills to transfer to other work occupations. Accordingly, Step 5 of 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). At the time of hearing, Claimant was 36 years old and was, thus, considered to be a younger individual for MA-P purposes. Claimant's education history is unclear based on his differing claims. However, it is clear that he was in special education classes and did not graduate from high school. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from Claimant to the Department to present proof that 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).

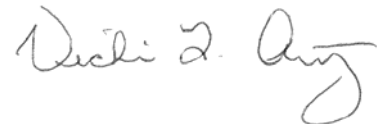
In this case, the evidence reveals that Claimant suffers from lower back pain, asthma, cannabis dependence, bipolar disorder, hearing voices, and alcohol dependence. The objective medical evidence notes no limitations. In light of the foregoing, it is found that Claimant maintains the residual functional capacity for work activities on a regular and continuing basis which includes the ability to meet the physical and mental demands required to perform at least light work as defined in 20 CFR 416.967(b). After review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 202.17, it is found that 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 Claimant not disabled for purposes of the MA-P benefit programs.

Accordingly, it is ORDERED:

The Department's determination is **AFFIRMED**.



Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: April 16, 2013

Date Mailed: April 16, 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.

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

VLA/las

cc:

