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

### IN THE MATTER OF:



Reg. No.: Issue No.: Case No.: Hearing Date: County: 2012-56392 2009

August 21, 2012 Newaygo

### ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

## HEARING DECISION

This matter is before the undersigned Ad ministrative Law Judge upon Claimant's request for a hearing made pursuant to Mi chigan Compiled Laws 400.9 and 400.37, which gov ern the administrative hearing a nd appeal process. After due notice, a telephone hearing was commenced on August 21, 2012, from Lansing, Michigan, Claimant, accompanied by his therapist, personally appeared and testified. Part icipants on behalf an Servic es of the Department of Hum (Department) included Lead Eligib ility Specialist and Eligibilit y Specialist

During the hearing, Claimant wa ived the time period for the i ssuance of this decision in order to allow for the submission of addi tional medical evidence. The new evidence was forwarded to the State Hearing Review Team (SHRT) for consideration. On December 12, 2012, t he SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

#### <u>ISSUE</u>

Whether the Department of Human Serv ices (the department) properly denied Claimant's application for Medical Assistance (MA) 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 December 12, 2011, Claimant f iled an applic ation for MA/Retro-MA benefits alleging disability.

- (2) On April 24, 2012, the Medical Re view Team (MRT) denied Claimant's application for MA -P and Retro-MA, i ndicating he was c apable of performing other work. (Department Exhibit A, pp 10-11).
- (3) On April 27, 2012, the department ca seworker sent Cla imant notice that his application was denied.
- (4) On May 30, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On July 13, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capac ity to perform simple repetitive tasks that avoid more than conc entrated exposure to pulmonary irritants. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of emph ysema, chronic obs tructive pulmonary disorder, ulcers, depression, bipolar disorder, schizophrenia and anxiety.
- (7) Claimant is a 46 ye ar old man whos e birthday is Claimant is 5'4" tall and weighs 139 lbs. Claimant completed the eleventh grade participating in special education classes.
- (8) Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

# CONCLUSIONS OF LAW

The Medic al Assistance (MA) program is est ablished by the Title XIX of the Socia I Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independ ence Agency) administers the MA program pursuant to MCL 400.10, *et seq*., and MC L 400.105. Department polic ies are found in the Bri dges 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 im pairment which can be expected to result in death or which has lasted or can be expect ed to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claimi ng a physical or mental disability has the burden to esta blish it through the use of competent medical evidence e from qualified medical sources such as his or her medical history, clinica l/laboratory findings, diagnosis/prescri bed treatment, prognosis for recovery and/or medical assessment of ability to do work-related ac tivities o r ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 413 .913. An individual's subjective pain com plaints ar e 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, t he 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 ext ent of his or her function on al 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 fivestep analysis requires the trier of fact to cons ider an individual's current work activit y; 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 det ermine whether an individual can perform past relev ant work; and residual functiona I capacity along with vocational factors (e.g., age, education, and work experienc e) 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 indi vidual's residual functional capacity is assessed before moving from Step 3 to St ep 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual f unctional capacity is the most an indiv idual can do d espite the limitations based on all relev ant evidence. 20 CF R 945(a)(1). An individual's residu al functional capacity assessment is eval uated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an i ndividual's functional capacity to perform basic work activities is evaluated and if f ound 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 indi vidual has the responsibility to prove disability. 20 CFR 4 16.912(a). An impairment or combination of impairments is not severe if it does not signific antly limit an i ndividual's physical or m ental ability to do basic work activities. 20 CFR 416.921(a). The in dividual 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 i ndividual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity and testified that he has not work ed since 2010. Ther efore, 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 disa bling impairments. In order to be considered disabled for MA purpos es, 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 in dividual'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 walk ing, 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 di sability claim obviously lacking in medical merit. *Higgs v Bowe n,* 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an admin istrative convenience to screen o ut 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 qualif ies as non-severe only if, regardless of a claimant's age, education, or wo rk 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 emphysema, chronic obstructive pulmonary disorder, ulcers, depression, bipolar disorder, schizophrenia and anxiety.

On December 14, 2011, Claimant went to the emergency department for an injured hand after punching a wall. X-rays revealed an oblique nondisplaced angulated fracture of the shaft of the fifth metacarpal bone. The distal end of the fifth metacarpal bon e is angulated approximately 52 degrees. There is no joint involvement. The rest of the hand appeared intact.

On February 21, 201 2, Claiman t underwent a psychiatric ex amination by his treating psychiatrist. Claimant appeared sloppy and dis heveled. He was tearful and had a depressed mood and flat affec t. He appears older th an his stated age. He has less than a high school education a nd a sporadic work history. Claimant stated that if he does not get help wit h his anger and life he will k ill himself. He has broken his h and because he hit a wall instead of his girlfr iend. His short term memory and long ter m memory were mildly impaired. He has sig nificant impairment on abstract ability, insight, judgment and his intellectual le vel is way below av erage. He is independent of all activities of daily living, but when he is stressed he cannot eat and his sleep is disrupted due to racing thoughts. He stat es that he feels like his brai n short circuits due to the constant thoughts and worries he experiences. He is currently homeless. Diagnosis: Axis I: Bipolar Disorder, most recent episode manic; Paranoid Personality Disorder; Axis III: Emphysema; Axis V: GAF=40.

On April 10, 2012, Claimant underwent a m edical examination on behalf of the department. Claimant has bipo lar disorder, schizophrenia, emphysema and a left hand injury. He customarily worked in concrete and his worked ended on a seasonal basis in 2010. He has not been back to work. He did have a left forearm chainsaw injury many years ago and had extens ive surgery to r epair tendons and nerves. He still has reduced sensation over the left 4<sup>th</sup> and 5<sup>th</sup> fingers and reduced active extension of them. Inspection of the hands reveals intrinsic muscl e atrophy of the left hand and inability to oppose the left thumb tip to the small finger. He also has inability to fully bring the fingers together. Impressions: Mental health problems, Emphysema and Left hand dysfunction post ulnar nerve injury and tend on injury. The examining physic ian opined that now that he has COPD symptoms, work in his c ustomary concrete field would be challenging in the humid w eather. His dyspnea on exerti on is sometimes associated with chest tightness in the left pectoral area. This does not radiate. Claimant wa S advised there was a chance the dyspnea is due to the heart more than the lungs and a treadmill test may be necessary to clarify that.

On June 5, 2012, Claimant saw his primary care physician to complete his disabilit y paperwork. He has COPD but has not had pulmonary function tests in numerous years. He has shortness of breath on exertion which c ould be re lated to COPD as he doe s continue to smoke. His bipolar affective disorder is not well managed and he will b e referred back to community mental health for medications.

On August 1, 2012, Claimant met with a physi cian as a new patient to review his chronic problems. He is seen in cons ultation for COPD. The symptoms have been worsening. COPD symptoms include dyspnea wit h exertion. Aggravating factors include moderate activity. He also has a peptic ulc er. He had a normal range of motion, muscle strength, and stability in all extremities with no pain. He was alert and oriented to time, place, pers on and situation. His m emory was intact. He had norm al insight and judgment. He demonstrated appropriate mood and affect. He was counseled on tobacco cessation.

As previously noted, Claimant bears the burden to pr esent sufficient objective medical evidence to substantiate the alleged disab ling impair ment(s). As summarized abov e, Claimant has present ed some limited medical evidence establishing that he does hav e some physical limitations on hi s ability to perform basic work activities. T he medical evidence has established that 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 las ted continuous ly for twelve months; t herefore, Claim ant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the seque ntial an alysis of a disability claim, the trier of fact must determine if the indiv idual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CF R, Part 404. Claim ant has alleged physical and mental dis abling impairments due to em physema, chronic obstructive pulmonar y disorder, ulcers, depression, bipolar disorder, schizophrenia and anxiety.

Listing 3.00 (respiratory system), Listing 4.00 (cardiovascular system), and Listing 12.00 (mental disorders) were cons idered 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, or not disabled, at Step 3. Accord ingly, 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 f unctional capacity ("RFC") and pas t relevant em ployment. 20 CF R 416.920(a)(4)(iv). Claimant has a history of less than gainful e mployment. As s uch, there is no past work for Claimant to perform, nor are there past work skills to transfer to other occupations. As a result, the analysis moves to Step 5.

In Step 5, an assessment of the individua I's residual functional capac ity and age, education, and work experience is consider ed to determine whet her an adjustment to other work can be m ade. 20 CFR 416.920(4)(v) At the time of hear ing, the Claimant was 46 years old and was, thus, consider ed to be a younger individual for MA-Ρ purposes. Claimant had completed the elev enth gr ade. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, t he burden shifts from the Claimant to the Department to pr esent proof that the Claimant has the residual capacity to substantial gainful employment. 20 CF R 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 individua I has the vocational qualifications to perform specific job s 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 vounger individuals (under 50) generally will not serious ly affect the ability to adjust to other work. 20 CF R 416.963(c). Where an individual has an impairment or combination of impairments that

results in both strength limit ations and non-exertional limit ations, the rules in Subpart P are considered in determining whether a finding of disabled may be possible base d on the strength limitations alone, and if not, the rule(s) re flecting the individual's maximum residual st rength capabilities, age, educ framework for consideration of how much diminished in terms of any type of jobs that consideration must be given to all releva definitions of each factor to provide adjudicative weight for each factor.

In this case, the evidence rev eals that Claimant suffers from emphysema, chronic obstructive pulmonary disorder, ulcers, dep ression, bipolar disorder, schizophrenia and anxiety. The objective medical evidence lists no limitations. In light of the foregoing, it is found that Claimant maintains the residual f unctional 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 M edical-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 the Claimant not disabled f or purposes of the MA-P/Retro-MA benefit programs. Accordingly, it is ORDERED:

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

/s/

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

Date Signed: January 2, 2013

Date Mailed: January 2, 2013

**NOTICE:** Administrative Hearings may or der a rehearing or reconsideration on either its own motion or at t he request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hear ings will not order a rehearing or reconsideration on the Department's mo tion where the final decis ion 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 <u>MAY</u> be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration <u>MAY</u> be granted for any of the following reasons:
  - misapplication of manual policy or law in the hearing decision,
  - typographical errors, mathematical erro r, 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

cc: