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

IN THE MATTER OF:

[redacted]

Reg. No.: 2013-3851
Issue No.: 2009; 4031
Case No.: [redacted]
Hearing Date: March 6, 2013
County: Grand Traverse

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Admini strative Law Judge upon the Claimant's request for a hearing made pursuant to Mi chigan Compiled Laws 400.9 and 400.37, which govern the administrativ e hearing and appeal process. After due not ice, an in-person hearing was commenced at the Gr and Traverse DHS office. Claimant personally appeared and test ified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [redacted] [redacted]

ISSUE

Whether the Department of Human Serv ices (the department) properly denied Claimant's application for Medical Ass istance (MA-P), Retro-MA and State Dis ability Assistance (SDA)?

FINDINGS OF FACT

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

(1) On June 29, 2012, Claimant app lied for MA-P, Retro-MA and SDA benefits.

(2) On September 12, 2012, the M edical Review T eam (MR T) denied Claimant's MA/Retro-MA applic ation indicating Claimant was capable of performing other work , pursuant to 20 CFR 416.920(f). SDA was denied due to lack of duration. (Depart Ex. A, pp 1-2).

(3) On September 21, 2012, the department caseworker sent Claimant notice that his application was denied.

(4) On October 10, 2012, Cla imant filed a request for a hearing to contest the department's negative action.

(5) On December 5, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA benefits indicating Claimant retains the capacity to perform simple and repetitive tasks. SDA was denied due to lack of duration. (Department Exhibit B, pp 1-2).

(6) Claimant has a history of depression, anxiety, repeated episodes of decompensation, stress related neck and shoulder pain, canker sores, attention deficit hyperactivity disorder (ADHD), and short-term memory problems.

(7) Claimant is a 47 year old man whose birthday is [redacted]. Claimant is 5'9" tall and weighs 250 lbs. Claimant completed four years of college and last worked in September, 2007.

(8) Claimant had applied for Social Security disability 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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

> Sec. 604 (1). The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:
>
> (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days.

> Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

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 CRF 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 September, 2007. 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 depression, anxiety, repeated episodes of decompensation, stress related neck and shoulder pain, canker sores, attention deficit hyperactivity disorder (ADHD), and short-term memory problems.

On January 22, 2012, Claimant called 911. The police filled out a petition in which it was noted, financial stress, prescribed multiple antidepressants and his thoughts of consuming all, and suicide attempt. He stated he would kill himself within the next 2 weeks. The petition was dated 1/22/12 and was completed by the deputy. It was noted in the emergency department that Claimant had had trouble with concentration and trouble with sleep. Claimant described his sleep as horrible, having slept a total of 20 hours over the last week. He reported his appetite was down and he had lost 10 pounds. He admitted having thoughts of harming others, but denied any plan or intent to do that. He stated that he would hurt himself prior to hurting anybody else. He did admit to suicidal thoughts. He stated he thought about taking alcohol along with something else and getting a weight belt and going into the lake. He admitted he called 911 for help. Claimant was admitted to the psychiatric inpatient unit on a formal voluntary basis. He was provided with a full range of therapeutic activities and groups. He was discharged in stable condition with a diagnosis of Axis I: Depressive disorder; Anxiety disorder; Possible attention deficit disorder; Axis III: History of seasonal allergies; History of seizure in 1997; Body aches "all over;" Nicotine makes him nauseated; Rash with Wellbutrin; Axis IV: Psychosocial stressors include financial problems and unemployment; Axis V: GAF=52.

On February 7, 2012, Claimant presented to [redacted] ([redacted] for follow-up after his psychiatric hospitalization from 1/22/12 to 1/26/12. An initial clinical assessment was completed by an MA, LPC. He was on time for his appointment. He was very well groomed and neatly dressed. His affect was anxious and flat. His mood was anxious, congruent, fearful, sad, and depressed. His thought processes were obsessive, ruminative, tangential, and circumstantial. He was cooperative and defensive. His concentration was focused. His judgment was fair and his insight was good. Claimant reported he moved to Michigan in 2002, after about a year off work. He reportedly did not work from 2002 to 2006. He reports panic attacks, increased frequency and intensity. He feels waves of panic, waves of nausea, hot flashes, racing thoughts, and heart racing. He has a significant pattern of rumination and obsessive thoughts that are immobilizing. He is unable to work, his attempts have been disastrous. He has constant worry, especially about his elderly parents. He experiences depression most days of the month, low hope, low motivation and energy, sleep disturbance, suicide thoughts with complicated planning, loneliness and boredom, emotional numbing, and crying. He feels overwhelmed. Diagnosis: Axis I; Depressive disorder; Anxiety disorder; Axis V: GAF=52.

On March 12, 2012, Claimant presented to the emergency department stating he felt like he might hurt himself. He reports that he thought about taking excess Vicodin last night but did not. His affect is flat. He makes poor eye contact. [redacted] was in to see Claimant and assumed care of him.

On April 19, 2012, Claimant met with his psych iatrist. Claimant had previously been in treatment with this psychia trist in 2006 and returned with wor sening sy mptoms of anxiety and depression. Claimant was hospita lized in Januar y, 2012, after voicing suicidal ideation with thought s of overdosing and dying by hypothermia in Lake Michigan. While hospitalized, he was placed on Cymbalta, Mirtazapine, Zolpidern and had Clonazepam dis continued. He reports that he was taki ng up to 4 to 6 mg of Clonazepam daily and reports that he doub led the dosage on hi s own. Subsequently, he had been placed on Buspiro ne in March, 2012, which he believes has not been beneficial and also had Cymbalta increased fr om 60 mg to 120 mg and b elieves it ha s not been helpful and he is now experiencing symptoms or urinary retention, hand tremor and constipation. Since his hospital discharge he has had ongoing symptoms of depression which more recently included f eelings of hopeless ness and worthlessness , poor energy (taking naps lasting up to 6 h ours daily), poor concentration, decreased appetite and ongoing thoughts of suicide which occur several times week ly and hav e included thoughts of j umping off a tall building or over dosing. Addi tionally, he reports having some difficult ies with initial insomn ia and sleeping 4 to 6 hours nightly wit h terminal insomnia as well. He rates hi s depression as 8/10. He has had ongoing symptoms of generalized anxiet y disorder which inc ludes sym ptoms of muscle tens ion, motor restlessness, fatigue, irrit ability and difficulties with insom nia. Also, he has ha d several panic attacks for the past several m onths which had not o ccurred previously. January, 2012 was his first psychiatric hos pitalization. He has no history of previous suicide attempts. He arriv ed on time for his appointment. He is casually dressed and groomed. He is cooperative and pleasant. His mood was depr essed. His affect i s constricted with no evidence of brightening. His t houghts are clear, logi cal, and slightly circumstantial, though overall goal direct ed. Memory and cognition appear grossly intact. The psychiatrist opined that there has been no change in Claimant from his previous treatment in 2006. He is likely experiencing side effects from C ymbalta at maximum dose with difficulties with urinary retention, cons tipation and tremor and ther e appears to be a lack of a significant antidepr essant response with the present treatment as well. He continues with fleeting thoughts of suicide, t hough there is no acute plan or intent. Risk of suicide for t he short term is felt to be lo w and long term risk depends on outcome of treatment. Diagnos is: Axis I: Major depression, recu rrent, moderate to severe; ADHD, Inattentive type; Generalized anxiety disorder; Dysthymic disor der, early onset; Ax is III: Obe sity, Seasonal allergies; Unspecified body “aches;” Axis IV: Unemployment, lack of health insurance, fi nancial difficulties , social isolation, few natural supports outside of family; Axis V: GAF=49.

On April 27, 2012, Claimant’s previous ps ychologist submitted an addendum to the social sec urity administration indicating Claimant demonstrates emotional barriers affecting his ability t o work including ch allenges with attenti on, persis tence, and frustration tolerance. Although motivat ed toward self-improvement, he requires substantial support processes that provide continuing reminders, cross-checking, and direction to complete multist ep activities. Claimant tend s to bec ome emotional, angry, or distrusting with setbacks or misunderstandings. He has difficulty conf orming to a schedule and pacing himself thr oughout the day. With increased pressure and stress, he evidences panic, defeatism, reduced confidenc e, and internal tens ion. His daily task to maintain his emotional st ability interferes with his abi lity to engage in job finding and performing gainful employment.

On May 17, 2012, Claimant met with his psychiatrist for a medication review. His therapist was also in attendance. He has begun weekly group psychotherapy and feels essentially unchanged. He is sleeping four to six hours nightly with continuing difficulties with insomnia. His primary concern is anxiety and unchanged depression. He continues with thoughts of death, though no suicidal ideation. He has continued to take Cymbalta 120 mg and has been able to discontinue Buspirone without difficulty. His also tolerating 40 mg Methylphenidate daily, and has noticed no specific benefit thus far. His mood is dysthymic and anxious and tense affect. His thoughts are clear and logical to some degree though mostly circumstantial and over-inclusive, though overall is goal directed. He does require some redirection. The psychiatrist opined that Claimant continues to have essentially unchanged depression with primary target symptoms of anxiety, depression, inattention, and insomnia. There are continuing thoughts of death, though no thoughts of suicide. He has not reduced Cymbalta as directed. He was instructed to reduce the Cymbalta to 60 mg, as previously discussed and begin Seroquel.

On June 5, 2012, Claimant presented for his scheduled medication review. Claimant reports that with Seroquel he has had some daytime sedation, though he believes it has been helpful in improving his mood and he rates it as 2-3/10 where 10 is euthymia and 0 worst depression, and he rates mood as 1/10 prior to beginning Seroquel XR. He is sleeping 8 to 12 hours nightly and believes that his anxiety is essentially unchanged. His mood is dysthymic and slightly tense affect with more brightening than on last visit. Thoughts are clear and logical and more goal directed versus last visit. The psychiatrist opined that Seroquel has possibly had some mild antidepressant benefit and improved his sleep quality, though some daytime sedation is noted. He was instructed to continue Cymbalta at 60 mg and reduce Seroquel XR to 100 mg to minimize daytime sedation.

On July 11, 2012, Claimant met with his psychiatrist for a medication review. Claimant sleeps 8-10 hours nightly and rates his mood as 3-4/10. He is now attending individual psychotherapy. He continues with anxiety and depression. His mood is dysthymic and he has a slightly tense affect with occasional brightening and joking at times. His thoughts are clear, logical and goal directed. He has continuing mild antidepressant benefits from Seroquest XR and he does have some mild morning sedation.

On August 6, 2012, Claimant underwent a psychological evaluation by [redacted] an MS, LLP. The therapist noted that Claimant always comes to his [redacted] appointments alone. He is well groomed, pleasant, and respectful. He wears fashionable clothes. He's always punctual and oriented. He's well educated and was enrolled in a well known college. He last worked as a computer programmed in 2007, and was fired after 18 months. His symptoms first began in 1999. His anxiety most recently has overshadowed his depression. His OCD symptoms virtually prevent him from maintaining gainful employment. He was hospitalized for in-patient psychiatric care at Munson Hospital in January, 2012 and March, 2012. He is oriented to person, place and time. His level of anxiety is currently moderate but can become panic. He is cooperative and pleasant. He worries excessively and obsesses as well as ruminates. He also can feel compelled to do things that are necessarily to his benefit, i.e., concentrate on tasks that delay getting essential tasks done. His judgment and insight are adequate. His memory is somewhat deficient. His knowledge of general

information is consistent with his educational le vel. He is logic al, can abstract, and has an above average IQ. His social interactions are affected by his anxiety and continual self doubting. He self esteem is far below what it should be. He has great difficult y completing tasks and gets distracted by details that my not be pertinent to the job o f highest priority. These factors would make it extremely difficult for him to work for an employer. Diagnoses: Axis I: Major depressi on, recurrent, moderate; Panic disorder without agoraphobia; Ax is II: Ob sessive compulsive personality disorder; Ax is III: Arthritis, dental needs, headaches , history of seizures; Axis IV: Difficulties with socia l and voc ational environments; Ax is V: Current GAF=45, Last year GAF=40. According to the Mental Residual Functi onal Capacity Assessment that was also comp leted by an MS, LLP, Claimant was markedly lim ited in his a bility to understand and remember detailed instructions; carry out detailed instructions; maintain attention and concentration for extended periods; work in coordination with or proximity to others without being distracted by them; complete a normal workday and worksheet witho ut interruptions from psychologically based sy mptoms and to perform at a consistent pac e without an unreasonable number and length of rest peri ods; and respond appropriately to change in the work setting.

On August 10, 2012, Claimant presented to the emergency department with thoughts of suicide. Claimant had apparent ly been out of his Ritalin and Cymbalta the past 5 days. He denied any actual suicid e plan. He was neurologically aler t and pleasant and moving all four extremities. His EKG is normal si nus rhythm with no acute ST or T-wave changes. Tr oponin negativ e. CBC and chem. 7 were unremarkable. Alcohol negative. Urine drug screen positive for cannabinoids. He was diagnosed with depression. Case was discussed with CMH. Formal disposition pending per CMH.

On August 12, 2012, Claimant was transpor ted to the emergency department by emergency medical services (EMS). Wh en he called EMS he stated that he was depressed and s uicidal. When he arriv ed at the emergen cy department, he had defecated on his medications earlier. He report ed to the staff that it was unintentional. He admitted to having thoughts of overdosing on his medications. He was discharged on 8/15/12 in stable condition with a diagnos is of Depressive disor der, Anxiety disorder, and Attention deficit disorder. His global as sessment of functioning (GAF) at discharge was 50.

On August 22, 2012, Claimant met with his p sychiatrist for his medication review. Reviewed recent hospitalizat ions and multiple ER vis its which he states were precipitated by suicidal ideation over panic of what he was doing. He appeared to have become ov erwhelmed with the applic ation for Medicaid and multiple DHS deadlines in addition to other confidence shat tering events regarding his elderly parents. Since his hospital discharge, he has had occasional fl eeting thoughts of suicide, although he believes he has a better handle on things. It appears he was denied Medicaid and will be referred to an assistance program for Seroquel IR and Cymbalta. His mood is anxious and dysthymic with a congruent affec t. His thoughts are clear and logical and somewhat circumstantial with need for redirection, though mostly goal directed.

As previously noted, Claimant bears the burden to pr esent sufficient objec tive medic al evidence to substantiate the alleged disab ling impair ment(s). As summarized abov e,

Claimant has presented some limited medical evidence establishing that he does have some 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 the 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 depression, anxiety, repeated episodes of decompensation, stress related neck and shoulder pain, canker sores, attention deficit hyperactivity disorder (ADHD), and short-term memory problems.

Listing 1.00 (musculoskeletal 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, or not 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's prior work history consists of work as a computer programmer. In light of Claimant's testimony, and in consideration of the Occupational Code, Claimant's prior work is classified as skilled, sedentary medium work.

Claimant testified that he is able to walk a mile or two, lift/carry approximately 20 pounds, stand for an hour or sit for 8 hours. Claimant's previous psychologist opined that Claimant demonstrates emotional barriers affecting his ability to work including challenges with attention, persistence, and frustration tolerance. Although motivated toward self-improvement, he requires substantial support processes that provide continuing reminders, cross-checking, and direction to complete multistep activities. Claimant tends to become emotional, angry, or distrusting with setbacks or misunderstandings. He has difficulty conforming to a schedule and pacing himself throughout the day. With increased pressure and stress, he evidences panic, defeatism, reduced confidence, and internal tension. His daily task to maintain his emotional stability interferes with his ability to engage in job finding and performing gainful employment. If the impairment or combination of impairments does not limit an

individual's 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 Claimant's testimony, medical records, and current limitations, it is found that Claimant could not return to past relevant work based on his mental limitations; thus Claimant would be found not disabled at Step 4.

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 47 years old and was, thus, considered to be a younger individual for MA-P purposes. Claimant has a college education. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from 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 Heal th and Hum an Services*, 587 F 2d 321, 32 3 (CA 6, 1978). Medical-Vocational guidelines found at 20 CF R 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 Cam pbell*, 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).

Where an individual has an impairment or combination of impairments that results in both strength limitations and non-exertional limitations, the rules in Subpart P are considered in determining whether a finding of disabled may be possible based on the strength limitations alone, and if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience, provide the framework for consideration of how much an individual's work capability is further diminished in terms of any type of jobs that would contradict the non-limitations. Full consideration must be given to all relevant facts of a case in accordance with the definitions of each factor to provide adjudicative weight for each factor.

In this case, the evidence reveals that Claimant suffers from depression, anxiety, repeated episodes of decompensation, stress related neck and shoulder pain, canker sores, attention deficit hyperactivity disorder (ADHD), and short-term memory problems. Medical evidence of disability must be based on the findings of an M.D. or D.O. or fully licensed psychologist. BEM 260. The objective medical evidence lists no physical limitations. His limitations regarding his mental impairments include challenges with attention, persistence and frustration tolerance and his need for a structured environment.

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 sedentary work as defined in 20 CFR 416.967(a). After review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.22**,** it is found that Claimant is not disabled for purposes of the MA-P program at Step 5.

The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p 1. Because Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that Claimant is unable to work for a period exceeding 90 days, Claimant does not meet the disability criteria for State Disability Assistance benefits.

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, Retro-MA and SDA 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: March 26, 2013

Date Mailed: March 26, 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.

VLA/las

cc: [redacted]