

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

**IN THE MATTER OF:**



Reg. No.: 2013-4311  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: February 12, 2013  
County: Oakland- 04

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 February 12, 2013, from Lansing, Michigan. Claimant, accompanied by the Benefits Coordinator for [REDACTED] personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED]

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team (SHRT) for consideration. On April 11, 2013, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

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

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 August 27, 2012, Claimant filed an application for MA and Retro-MA benefits alleging disability.
- (2) On September 18, 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. (Depart Ex. A, pp 6-7).
- (3) On September 21, 2012, the department sent out notice to Claimant that his application for Medicaid had been denied.

- (4) On October 9, 2012, Claimant's representative filed a request for a hearing to contest the department's negative action.
- (5) On November 20, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA benefits indicating Claimant retains the capacity to perform a wide range of simple, unskilled, medium work. (Depart Ex. B, pp 1-2).
- (6) Claimant has a history of hypertension, hypertensive heart disease, congestive heart failure, thyroid disease, gastroesophageal reflux disease (GERD), lumbar disc disease, degenerative joint disease, diabetes, lipid disorder, chronic obstructive pulmonary disease (COPD), asthma, obstructive sleep apnea, cardiomegaly, neuropathy, depression, bipolar disorder, and anti-social personality disorder.
- (7) Claimant is a 51 year old man whose birthday is [REDACTED] Claimant is 5'7" tall and weighs 246 lbs. Claimant completed the eleventh grade and last worked in June, 2003.
- (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, the Claimant is not involved in substantial gainful activity and testified that he has not worked since June, 2003. 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 hypertension, hypertensive heart disease, congestive heart failure, thyroid disease, gastroesophageal reflux disease (GERD), lumbar disc disease, degenerative joint disease, diabetes, lipid disorder, chronic obstructive pulmonary disease (COPD), asthma, obstructive sleep apnea, cardiomegaly, neuropathy, depression, bipolar disorder, and anti-social personality disorder.

On January 20, 2012, Claimant was admitted to the hospital for acute bronchitis with bronchospasm. He was discharged on January 23, 2012, with a diagnosis of acute exacerbation of chronic obstructive airway disease, cardiomyopathy, bipolar disorder, accelerated essential hypertension, obstructive sleep apnea, and acute myocarditis.

On April 11, 2012, Claimant saw his cardiologist. Claimant was having occasional episodes of chest pain. He was using nitroglycerin. He also had some shortness of breath, fatigue, and claudication. He was still smoking and aware he should quit. His

blood pressure was 127/90. He weighed 248 pounds. The heart revealed a regular rate and rhythm. His lungs were clear. His Holter monitor showed premature atrial contractions and premature ventricular contractions. His echocardiogram showed a 50% ejection fraction with left ventricular hypertrophy. The nuclear scan was positive for ischemia in the lateral wall with a fixed inferior defect and an ejection fraction of 38%. Claimant was diagnosed with hypertension and atherosclerotic heart disease, angina pectoris, previous non ST myocardial infarction, a positive nuclear scan in the lateral wall with a fixed inferior defect, an ejection fraction of 38% by nuclear and 50% by echocardiogram consistent with moderate systolic dysfunction, and congestive heart failure.

On June 16, 2012, Claimant underwent a medical evaluation by the Disability Determination Service. Claimant reported a history of shortness of breath with bronchitis, sleep apnea, back pain, heart disease with a history of acute myocarditis, cardiomyopathy, and hypertension. He indicated an unknown diagnosis for his back and had no radicular pain. He stated he could not lift more than 10 pounds without having pain. He had a history of asthma and bronchitis since January, 2012. He smoked a half pack per day for the last thirty years. He could not walk for more than one block without being short of breath. He had never had a sleep study nor had he been diagnosed with sleep apnea. He had no history of congestive heart failure. He was diagnosed with hypertension, cardiomyopathy and myocarditis in January, 2012. He had a history of a myocardial infarction in January, 2012. He stated he had a heart catheterization in the past but did not know the results. Gait was normal. The heart did not appear to be enlarged clinically. He had paraspinal muscle tenderness to palpation about his lumbar spine. He had no muscle spasms. There was no erythema, or effusion of any joint. He had no difficulty with orthopedic maneuvers, getting on and off the table and heel to toe. He had mild difficulty with squatting and hopping. He had full range of motion about his cervical and lumbar spine.

On June 22, 2012, Claimant underwent a psychological evaluation on behalf of the department. Claimant was clumsy with gait and ambulation. He reported pain in his legs, knees and back. He had problems standing erect. He tended to wobble when walking. He was polite and cooperative, but tended not to understand things at times and appeared abrupt with mood. He had low self-esteem. He was dependent with low motivation. He did not tend to exaggerate his symptoms. His insight was moderate. He stated he hallucinates and is paranoid. He reported having anxiety and suicidal ideations and attempts in the past. The examining psychologist indicated that Claimant believed his primary problem in attaining employment was his history of being in jail. He felt his criminal felony conviction made him unemployable. He also reported that pain affected his ability to use his legs and feet very long. He stated he had shortness of breath with his heart problems. He reported depressive episodes, hospitalizing him. The psychologist noted Claimant had a limited education and denied a history of learning problems. Claimant exhibited the ability to understand and follow instructions. He reported that he used to get along with others but now prefers to stay away from others. The psychologist opined that Claimant would most likely need the support of an agency such as Michigan Rehabilitation to assist him in finding work that would be

limited and commensurate with his felony conviction and medical difficulties. Claimant stated he could manage his own benefit funds, however the psychologist indicated that with his history of polysubstance abuse, Claimant would need assistance in managing benefit funds. Diagnosis: Axis I: Bipolar Disorder; History of polysubstance abuse in remission; Axis II: Antisocial Personality features; Axis III: Sleep apnea, Back problems with pain; Acute myocarditis; Asthma; High blood pressure; Cardiomyopathy; Acute bronchitis; Overweight; Axis IV: Prison stint affecting ability to regain old employment; dependent; financial stress; history of psychiatric hospitalizations; multiple medications; Axis V: GAF=50/55.

On July 30, 2012, Claimant underwent a psychiatric evaluation by his treating psychiatrist. Claimant had been going to [REDACTED] for the last 5 years since his release from prison in 2007. Claimant did not receive psychiatric treatment in prison. Claimant stated his primary concern was not having money. He had been denied by social security three times and was appealing with a lawyer. Claimant stated he had been treated for mood symptoms, restlessness, tiredness, leg, which he did not seek treatment for before going to [REDACTED]. Claimant stated he had these symptoms for 12 years. He was in prison for three years for unarmed robbery. He had completed parole. He had been unemployed for 8 years. Claimant was under a cardiovascular physician's care and had not been compliant with his treatment. He was cooperative. His mood, affect, psychomotor activity, thought content, and speech were all within normal limits. His thought process was goal directed. Diagnosis: Axis I: Mood disorder; Depressive disorder; Cannabis abuse, Cocaine dependence in remission; Alcohol intoxication in remission; Axis II: Antisocial personality disorder; Axis III: Asthma; Axis V: GAF=55.

On September 27, 2012, Claimant followed up with his cardiologist regarding his multi gated acquisition scan (MUGA) results. Claimant had an ejection fraction of 42% with global hypokinesis of the left ventricle, which was up from his previous ejection fraction of 30-35%. His blood pressure was 102/65 with a heart rate of 100 beats per minute and weight of 250 pounds. The heart revealed a regular rate and rhythm. No gallops or murmurs were appreciated. His lungs were clear to auscultation bilaterally. He had some lower extremity edema mainly in the left leg 1+ in nature. He was counseled on the importance of following up with a sleep study but refused. He was scheduled to return in 6 months or earlier as need.

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 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 hypertension, hypertensive heart disease, congestive heart failure, thyroid disease, gastroesophageal reflux disease (GERD), lumbar disc disease, degenerative joint disease, diabetes, lipid disorder, chronic obstructive pulmonary disease (COPD), asthma, obstructive sleep apnea, cardiomegaly, neuropathy, depression, bipolar disorder, and anti-social personality disorder.

Listing 1.00 (musculoskeletal system), Listing 3.00 (respiratory system), Listing 4.00 (cardiovascular 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 an assistant manager. In light of Claimant's testimony, and in consideration of the Occupational Code, Claimant's prior work is classified as unskilled, light work.

Claimant testified that he is able to walk short distances and can lift/carry approximately 8 pounds. The objective medical evidence notes no limitations. 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 the Claimant's testimony, medical records, and current limitations, Claimant cannot be found able to return to past relevant work. 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, the Claimant



was 50 years old and was, thus, considered to be an individual approaching advanced age for MA-P purposes. Claimant has an eleventh grade 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 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). 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.

Based on Claimant's vocational profile (approaching advanced age, Claimant is 50, has an eleventh grade education and an unskilled work history), this Administrative Law Judge finds Claimant's MA, Retro/MA and SDA are approved using Vocational Rule 201.09 as a guide. Consequently, the department's denial of his August 27, 2012, MA/Retro-MA and SDA application cannot be upheld.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining Claimant is not currently disabled for MA/Retro-MA and SDA eligibility purposes.

Accordingly, the department's decision is REVERSED, and it is Ordered that:

1. The department shall process Claimant's August 27, 2012, MA/Retro-MA and SDA application, and shall award him all the benefits he may be entitled to receive, as long as he meets the remaining financial and non-financial eligibility factors.

