

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

IN THE MATTER OF:

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Reg. No.: 2013 2987
Issue No.: 2009
Case No.: ██████████
Hearing Date: February 11, 2013
DHS County: Wayne County (18)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a telephone hearing was held in Detroit, Michigan, on February 11, 2013. The Claimant appeared and testified. ██████████, the Claimant's Authorized Hearing Representative (AHR), appeared on behalf of the Claimant. ██████████, ES, appeared on behalf of the Department of Human Services ("Department").

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") benefit program?

FINDINGS OF FACT

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

1. The Claimant submitted an application for public assistance seeking MA-P benefits and retro benefits on July 20, 2012.
2. On September 18, 2012 the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1)
3. The Department notified the Claimant of the MRT determination on September 21, 2012.
4. On October 1, 2012, the Department received the Claimant's timely written request for hearing.

5. On November 26, 2012 the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued on February 12, 2013 to obtain new medical evidence and updated medical examinations. The Claimant was to provide completed evaluation forms from his psychiatrist at the [REDACTED] and also a Medical Examination Report from the [REDACTED], which were not received. The new evidence submitted at the hearing and obtained by the Department as ordered was submitted to the State Hearing Review Team on April 2, 2013.
7. On October 18, 2012 the State Hearing Review Team found the Claimant not disabled.
8. The Claimant alleges physical disabling impairments due to asthma, diabetes, Hypertriglyceridemia and chronic pancreatitis.
9. The Claimant has alleged a mental disabling impairment due to chronic major depression.
10. At the time of hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth date. The Claimant is now 23 years old. Claimant is 6’0” in height; and weighed 159 pounds.
11. The Claimant has a high school education and an employment history working in a fast food restaurant as a food preparer and cook and also as a dishwasher in a restaurant. The Claimant left this employment due to his inability to stand for long periods of time. The jobs required standing most of the day.

CONCLUSIONS OF LAW

The Medical Assistance (“MA”) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, formerly known as the Family Independence Agency, pursuant to MCL 400.10 *et seq.* and MCL 400.105. Department policies are found in the Bridges Administrative Manual (“BAM”), the Bridges Eligibility Manual (“BEM”), and the Bridges Reference Manual (“BRM”).

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The 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 BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a) (4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If

a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity and, therefore, is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;

5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting.

Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a Claimant's age, education, or work experience, the impairment would not affect the Claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

The Claimant alleges physical disabling impairments due to asthma, diabetes mellitus, Hypertriglyceridemia and chronic pancreatitis.

The Claimant has alleged mental disabling impairments due to chronic major depression.

The medical evidence produced at the hearing and new medical evidence follows.

The Claimant was seen [REDACTED] in the emergency room and treated for abdominal pain and admitted for acute pancreatitis. In [REDACTED] the Claimant was also hospitalized due to pancreatitis, obstructive jaundice.

The Claimant was seen in the emergency room for depression on [REDACTED] and discharged home after testing.

The Claimant was hospitalized for a three day stay on [REDACTED] for acute pancreatitis with pseudocyst, noting diabetes mellitus, high triglycerides, and depression. Claimant was discharged in stable condition.

The Claimant was seen on [REDACTED] for abdominal pain due to acute pancreatitis, and conditions due to diabetes and hypertriglyceridemia, and was hospitalized for 6 days. A CT of abdomen and pelvis was performed with findings/impression of extensive pancreatic/peripancreatic abnormalities with extensive surrounding inflammatory changes/edema; findings suggest acute chronic pancreatitis, irregular tail pseudocyst with extensive pancreas tail destruction.

Claimant is seen regularly for follow up at his treating clinic. He has consistently been seen for diabetes, chronic pancreatitis, nausea with vomiting, fatigue and anemia. The progress note from [REDACTED] notes Claimant was seen by his treating clinical doctor who noted that Claimant remains disabled from all forms of employment at this time and continues to have abdominal pain, nausea/vomiting and seen in emergency room twice in the last 30 days.

The Claimant was seen at the treating clinic by the treating doctor on [REDACTED].

Patient was seen on [REDACTED] for follow up after hospital stay due to pancreatitis and recurrent vomiting. Patient non-compliant with meds secondary to cost.

The Claimant was seen on [REDACTED] at the emergency room with abdominal pain and hyperglycemia. On admission the TG level was 543, hyperglycemic in the 600s, and lipase was 485. Previous CT showed acute on chronic pancreatitis, irregular tail pseudocyst, splenoprotal/mesenteric venous stenosis, and substantial pancreatic tail atrophy/destruction. Claimant was discharged in fair condition.

The Claimant was seen at his follow up clinic on [REDACTED] 2013, noted that patient still poor control and compliances cannot afford insulin. Patient was deemed stable.

On [REDACTED] the Claimant presented to the emergency room and a 3 day hospital stay followed. Claimant was diagnosed with abdominal pain with an admission diagnosis of pancreatitis, with pseudocyst, hypertriglycerdemia and uncontrolled diabetes. At admission the Claimant was positive for fever and chills, nausea and vomiting; after testing he was discharged home with appropriate glycemic control, pain well controlled and tolerating diet. At CT of the abdomen was performed noting persistent findings consistent with pancreatitis with fluid collection likely a pancreatic pseudocyst. Findings suggestive of partial small bowel obstruction.

The Claimant underwent a comprehensive assessment for depression on [REDACTED]. After the assessment the Claimant was diagnosed with major depressive disorder, recurrent severe without psychotic; the GAF score was 48. The Claimant's insight was limited and judgment rated fair. The prognosis was guarded with little insight into drinking problem. At that time the Claimant was deemed appropriate for outpatient services. Claimant met for follow up on [REDACTED] with a psychiatrist with a diagnosis of major depressive disorder and GAF of 48. The Claimant participates in bi-weekly therapy.

The Claimant was also seen on [REDACTED] for a follow up visit after his hospital stay. The notes indicated that follow up with endocrinologist required due to brittle diabetes. Noted that blood sugars are difficult to control and require continued specialty follow up. Claimant found not to have recurrent pancreatitis but as pseudocyst and will need long term follow-up GI with possible surgical intervention. Also notes suffers from chronic pain secondary to pancreatitis. The Claimant was also diagnosed with hyperchylomicronemia, noted to be chronic and difficult to treat, required long term follow up with a lipid or endocrinology specialist. The last diagnosis was chronic anemia.

The Claimant was also seen at the emergency room with abdominal pain. A Medical Examination Report was completed [REDACTED] which gave a current diagnosis of abdominal pain, fatigue and anemia. The Claimant was evaluated as stable with low mood and energy.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged physical impairments due to asthma, diabetes, chronic pancreatitis with pseudocyst and Hypertriglycerdemia. The Claimant has alleged mental disabling impairments of chronic major depression.

Listing 9.00 (5) a i Diabetic ketoacidosis (DKA) and ii Chronic hyperglycemia were reviewed and ultimately it was determined that the Claimant did not meet the listing as no other listings regarding other medical conditions were satisfied or met. Listing 12.04 Affective Disorders, Depression was also considered in light of the objective medical evidence and was not met.

The fourth step in analyzing a disability claim requires an assessment of the Claimant's 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age,

education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s) and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.*

Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In

considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity to the demands of past relevant work must be made. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (e.g., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The Claimant's prior work history consists of employment as a dishwasher and food preparer at a fast food restaurant and as such Claimant loaded dishwashers, set up food, worked at the grill and was on his feet most of the day.

In light of the Claimant's testimony and records, and in consideration of the Occupational Code, the Claimant's prior work is classified as unskilled, light to medium work.

The Claimant credibly testified that he is able to walk half a mile, and can sit 4 to 5 hours and stand half an hour and credibly testified that he could not stand for a whole day. The Claimant often experiences abdominal pain due to pancreatitis and is prescribed pain medication for his pain. The Claimant further testified that he could carry up to 25 pounds. The Claimant also administers to himself 3 to 4 insulin shots a day. The Claimant has been diagnosed with chronic depression which affects his anger and anxiety and sleep disturbance.

Pursuant to the objective medical evidence, the evidence only supports one period when the Claimant's doctor indicated that he could not work. Additional objective medical evidence was requested as part of the Interim Order and the Claimant was to obtain further medical evaluation from the [REDACTED] consisting of evaluations by Claimant's treating primary care physician there and the Claimant's psychiatrist. These evaluations were not received. Thus the evaluation can only be done on objective medical evidence available which does not demonstrate what physical limitations, if any,

the Claimant has with regard to his alleged physical disabling impairments and any limitations regarding the effect the Claimant's depression has on his mental residual function capacity.

Notwithstanding the fact that no medical evaluations were received, the Claimant's restrictions due to multiple hospitalizations due to pancreatitis and difficult to control diabetes, as well as diagnosed depressions, do limit the Claimant; however, it is determined in light of the Claimant's testimony and medical evidence of record that the Claimant cannot return to past relevant work.

If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920. In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is not able to return to past relevant work; thus, the fifth step in the sequential analysis is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). The Claimant is ■ years old and, thus, is considered to be younger individual for MA purposes. The Claimant is a high school graduate. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

In this case the evidence reveals that the Claimant's medical conditions are resulting from his diabetes mellitus, and chronic pancreatitis with pseudocyst and mental impairment due to chronic severe depression.

After a review of the entire record, including the Claimant's testimony and the objective medical evidence presented, and in consideration of the Claimant's physical impairments and mental impairments it is determined that the Claimant maintains the residual functional capacity for work activities on a regular and continuing basis includes the ability to meet the physical and mental demands required to perform sedentary work

as defined in 20 CFR 416.967(a). After review of the entire record and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.27, it is found that the Claimant is not disabled for purposes of the MA-P program at Step 5.

The objective medical evidence provided by the Claimant's medical records and Claimant's testimony and his multiple hospital admissions for his diabetes and chronic abdominal pain due to pancreatitis place the Claimant at the sedentary activity level as Claimant could not perform his past work due to standing but can sit 5 to 6 hours. The total impact caused by the physical impairment suffered by the Claimant must be considered. Accordingly, it is found that the Claimant is able to perform the full range of activities for sedentary work as defined in 20 CFR 416.967(a). After review of the entire record, and in consideration of the Claimant's age, education, work experience and residual functional capacity, it is found that the Claimant is not disabled for purposes of the MA-P program at Step 5 pursuant to

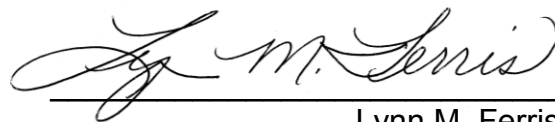
It is found that the Claimant is not disabled for purposes of the MA-P program at Step 5.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant is not disabled for purposes of the MA-P.

Accordingly, It is ORDERED:

1. The Department's decision is AFFIRMED.



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

Date Signed: July 11,2013

Date Mailed: July 11, 2013

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the Claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

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

LMF/cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
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