

4. On March 4, 2013 the Department received the Claimant's timely written request for hearing.
5. On May 7, 2013, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued July 8, 2013. The new evidence was submitted to the State Hearing Review Team on September 22, 2013.
7. November 12, 2013 the State Hearing Review Team found the Claimant not disabled.
8. The Claimant alleges physical disabling impairments due to seizures, herniated disc disease (low back), and varicose vein problems.
9. The Claimant has alleged a mental disabling impairment due to depression.
10. At the time of hearing, the Claimant was ■ years old with an ■ birth date. Claimant is now ■ years of age. Claimant is 5'11" in height; and weighed 145 pounds at the time of the hearing.
11. The Claimant has a high school education. The claimant's past work was performing general labor planting trees and landscaping, roofing, general construction, pouring concrete basements and hydraulic repair work.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

The State Disability Assistance (SDA) 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 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 seizures, herniated disc disease (low back), and varicose vein problems.

The Claimant alleges mental disabling impairment due to depression.

No medical evidence was submitted regarding the Claimant's herniated disc disease or varicose vein problems.

A summary of the medical evidence follows.

On [REDACTED] a Consultative Psychiatric Examination was performed. The claimant was at that time taking Tegretol, Prozac, Vicodin and Zantac with no ongoing treatment. The examiner noted the claimant was anxious during the interview, was in contact with reality and had some insight with low self-esteem. The examiner noted claimant expressed suicidal thoughts but no attempts and that his sleep pattern is poor. Claimant reported mood swings and forgetfulness with memory problems. Claimant further reported poor appetite. The patient's mood was depressed and the affect was blunted. The diagnosis was Major Depressive Disorder with psychosis. The GAF score was 45. The prognosis was fair to guarded.

As part of the consultative psychiatric examination a Mental Residual Functional Capacity Assessment was performed. The claimant was markedly limited in his ability to carry out simple one and two step instructions. The claimant was not significantly limited in his ability to understand and remember one or two step instructions, the ability to sustain an ordinary routine without supervision, the ability to make simple work-related decisions and the ability to interact appropriately with the general public. The examiner also noted the claimant had no evidence of any limitation in his ability to ask simple questions or request assistance. As regards adaptation, the claimant was moderately limited in all categories including ability to respond appropriately to changes in the work setting, be aware of normal hazards and take appropriate precautions, travel in unfamiliar places or use public transportation, and to set realistic goals or make plans independently of others.

As regards Sustained Concentration and Persistence the claimant was moderately limited in his ability to carry out detailed instructions, maintain attention and concentration for extended periods and work in coordination with or proximity to others without being distracted by them. With respect to Social Interaction the claimant was moderately limited in his ability to accept instructions and respond appropriately to criticism from supervisors, ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes and the ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness.

The claimant was admitted on [REDACTED] for a 12-day hospital stay due to dehydration, electrolyte imbalance and aspiration. The admission was as a result of alcohol intoxication which was the primary discharge diagnosis. At the time of the admission the claimant was found to be septic with suspected aspiration pneumonia. The claimant was placed in the ICU due to septic shock with decreased liver function. During his hospital stay claimant was intubated due to oxygen deficiency with respiratory failure. Patient was advised every day of the harmful effects of alcohol and the importance of fluid uptake. Claimant was discharged in stable condition with oral antibiotic due to dog bite, Neurontin and multivitamin with follow-up with primary care physician. At the time of his admission claimant was experiencing alcohol withdrawal and delirium tremens.

The claimant was admitted for an eight day hospital stay on [REDACTED] with the diagnosis of alcohol withdrawal syndrome. By history the claimant's hospital records indicate that he had a five minute seizure prior to his admission with two episodes during a seven-year period. The claimant was neurologically intact with 5/5 strength in all four extremities. The neurological examination gave an impression of seizure disorder tonic – clonic seizures by description which are alcohol related, history is not consistent with alcohol withdrawal seizures. An MRI of the brain noted moderate multifocal microvascular ischemia pattern in bilateral cerebral white matter mostly front. No mass, enhancing lesion or clearly acute process is demonstrated. Nonspecific congestion and a few of the lower mastoid air cells.

The claimant was prescribed anti-seizure medication and the neurologist advised that claimant could not drive for six months following the seizure and particular reference is made to avoidance of heights, water, power tools, heavy equipment, high-voltage lines, dangerous chemicals and open fires. These restrictions continued indefinitely. The exam also noted that cognitive impairment is present. The claimant did have anemia which was related to alcohol and malnourishment. By history, the claimant had 30 years of heavy drinking. A neurologic examination was conducted during the hospital stay and a CT of claimant's head noted generalized cerebral and cerebellar volume loss with electrolyte abnormality most likely due to malnourishment and alcohol abuse with an MRI showing no acute processes. On discharge it was noted that the claimant could

return to school or work in two weeks and was advised not to smoke or drink. The claimant was given Prozac on discharge. As regards seizures the discharge notes that the EMG was negative for epileptiform waves. At discharge, status was improved and noted that rehab potential was good. At the time of the admission the Claimant was drinking 8 to 10 beers a day and at least a pint to a fifth of alcohol.

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 objective medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. Accordingly, 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 asserts disabling impairments due to seizures, herniated disc disease (low back), and varicose vein problems.

The Claimant alleges mental disabling impairment due to depression.

Listing 11.02 Epilepsy - convulsive epilepsy (grand mal or psycho motor) was considered in light of the objective medical evidence. Ultimately, it is found that the Claimant suffers from some medical conditions; however, the Claimant's impairments do not meet the intent and severity requirement of a listing. The listing requires seizures documented by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once a month, in spite of at least 3 months of prescribed treatment. The medical evidence submitted does not support a finding that listing 11.02 was met and additionally the claimant testified at the hearing that he had not had a seizure since December 2012. Listing 12.04 Affective Disorders (depression) was also consulted and based on the consultative examination it is found that the listing was not met.

Therefore, the Claimant cannot be found disabled, or not disabled, at Step 3. Accordingly, the 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 claimant'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 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 performing general labor including planting trees and landscaping, roofing, general construction, pouring concrete basements and hydraulic repair work. In some of these positions the claimant was required to lift heavy objects weighing between 40 to 100 pounds.

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 medium work.

The Claimant testified that he is able to walk about 1 – 2 blocks. The Claimant testified that he could bend at the waist and that he could perform a squat. The claimant testified that he could tie his shoes and cannot touch his toes. The Claimant can shower and dress himself. The Claimant testified that he has pain and numbness and burning in feet especially when climbing stairs. No medical evidence to support the testimony regarding numbness and tingling in Claimant's feet and legs was presented. The Claimant further testified that the heaviest weight he could carry was approximately 8 pounds or a gallon of milk. The Claimant stated he could stand 30 to 45 minutes and could sit 15 to 20 minutes. The Claimant can cook simple meals. The Claimant further testified that he has some short term and long term memory problems. Claimant further testified that he could vacuum and do laundry and is able to meet his needs in the home. After his last hospitalization claimant received neurological restrictions due to the seizure he experienced which prohibited certain activities for his own safety. Additionally, claimant's driving was restricted for six months due to seizure activity,

however it is noted that the claimant has no current driver's license due to having a previous DUI. It is further noted that the consultative mental status examination evaluated the claimant as moderately impaired in most categories.

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; due in large part the lifting carrying requirements of those prior jobs and that he cannot be around heavy machinery, water, heights, power tools, heavy equipment, high-voltage lines, dangerous chemicals and open fires.. 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 52 years old and, thus, is considered to be an individual closely approaching advanced age for MA purposes. The Claimant graduated from high school. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from 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 has a medical impairment due to seizure disorder and depression based on the medical evidence available and presented. Additionally, it is found that claimant has a lifelong history of alcohol abuse and that both of the hospitalizations presented as medical evidence involved alcohol-related conditions causing the hospitalization. It is further determined that alcohol is material with respect to the claimant's claim of disability. Based upon the foregoing objective medical evidence and the fact that the claimant does have restrictions for his own safety due to the seizures, it is found that the Claimant is capable and has the ongoing capacity for light work.

In consideration of the foregoing and in light of the objective limitations, it is found that the Claimant retains the residual functional capacity for work activities on a regular and

continuing basis to meet the physical and mental demands required to perform light 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 202.10 it is found that the Claimant is not disabled for purposes of the MA-P program at Step 5.

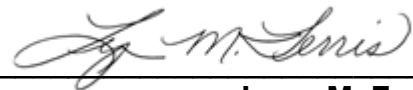
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant not disabled for purposes of the MA-P and/or SDA benefit program.

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 benefit program.

Accordingly, it is ORDERED:

The Department's determination is AFFIRMED.



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

Date Signed: December 10, 2013

Date Mailed: December 10, 2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;

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- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

LMF/cl

CC:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]