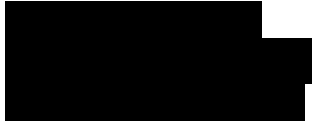


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 2013668638
Issue No.: 2009, 4001
Case No.: [REDACTED]
Hearing Date: January 29, 2014
County: Bay County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on January 29, 2014. Claimant personally appeared and provided testimony. Claimant was represented by [REDACTED] with [REDACTED]. The department was represented by [REDACTED] an assistance payments supervisor with the department's Bay County office.

During the hearing, this Administrative Law Judge granted Claimant's authorized representative's request to leave the record open in order that Claimant may submit additional medical records by January 31, 2013. However, on February 4, 2014, Claimant's authorized representative advised that additional medical records from Claimant's treating psychiatrist were not available and that she was not opposed to closing the record and issuing a decision based on the evidence in the file.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA-P) and State Disability Assistance (SDA) programs?

FINDINGS OF FACT

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

1. On May 31, 2013, Claimant submitted an application for public assistance seeking MA-P benefits, retroactive MA-P benefits, and SDA benefits.

2. On August 28, 2013, the Medical Review Team (MRT) found Claimant not disabled. (Exhibit A, pp. 1-2)
3. On August 30, 2013, the Department notified Claimant of the MRT determination.
4. On September 10, 2013, the Department received Claimant's timely written request for hearing.
5. On November 17, 2013, the State Hearing Review Team (SHRT) found Claimant not disabled. (Exhibit B, pp. 1-2)
6. Claimant alleged physical disabling impairments due spinal damage, nerve damage, severe knee issues, seizures, and black outs.
7. Claimant alleged mental disabling impairments due to attention deficit disorder, bipolar, severe social anxiety and depression.
8. At the time of hearing, Claimant was 37 years old with a February 3, 1976 birth date; was 5'8" in height; and weighed 205 pounds.
9. Claimant completed the 11th grade and has an employment history in building restoration, maintenance, and cleaning service.

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. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Bridges Reference Tables (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 416.913. 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 (i.e. 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 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 three to step four. 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 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 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).

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). An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i). Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done (or intended) for pay or profit. 20 CFR 416.910(a)(b). Substantial gainful activity is work activity that is both substantial and gainful. 20 CFR 416.972. Work may be substantial even if it is done on a part-time basis or if an individual does less, with less responsibility, and gets paid less than prior employment. 20 CFR 416.972(a). Gainful work activity is work activity that is done for pay or profit. 20 CFR 416.972(b).

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

The severity of Claimant's alleged impairment(s) is considered under Step 2. 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).

In the present case, Claimant alleges disability due to spinal damage, nerve damage, severe knee issues, seizures, and black outs, as well as attention deficit disorder, bipolar, severe social anxiety and depression.

On August 30, 2012, an MRI of the lumbar spine showed no significant impingement.

On November 14, 2012, an MRI of the cervical spine showed mild torticollis to the right, mild cervical spondylotic changes to C3-C4 resulting in mild to moderate right foraminal stenosis, cervical spondylotic changes at C4-C5, C5-C6, resulting in severe right foraminal stenosis, and cervical spondylotic changes at C6-C7, resulting in severe left foraminal stenosis.

On January 16, 2013, Claimant was seen at [REDACTED] Center for chronic neck pain. At that time, Claimant reported he was working as a handyman and has regular employment. A physical examination showed severe limitation in the range of motion of the cervical spine, cervical radiculopathy, and cervical facet arthropathy mostly on the right side. The treatment plan included an increased dosage of Neruontin, prescribed Elavil, a left knee injection times three, and prescribed Vicodin, with recommended physical therapy.

On January 17, 2013, an MRI of the left femur showed a normal exam.

On February 26, 2013, Claimant was seen at M.P.A. Group NFP for issues related to mood instability and substance dependence. At that time, he reported that he remained unemployed and that he had little hope of employment due to his felony record. He further reported discharge from a pain clinic for abusing medications and admitted that he filed two prescriptions by two different physicians for Gabapentin. He further reported continued heavy use of alcohol. Claimant was diagnosed with bipolar disorder and polysubstance dependence with a GAF of 50 and was recommended for individual therapy 2-4 times per month and scheduled for psychiatric evaluation.

On April 24, 2013, Claimant was discharged from treatment with M.P.A. Group NFP because he failed to respond to outreach by the therapist in a timely fashion.

On May 8, 2013, Claimant was seen at [REDACTED] [REDACTED] [REDACTED] for evaluation of new onset seizure activity occurring on May 7, 2013. At that time, he reported a March 4, 2013 motor vehicle accident, where he may have briefly lost consciousness. A consult with Claimant's primary care physician revealed that Claimant had been discharged from their clinic due to multiple missed appointments. It was noted that possible contributors to Claimant's seizure activity were sleep deprivation and Ultram. It was recommended that Claimant discontinue the Ultram and an MRI of the brain and cervical spine were ordered.

On May 8, 2013, an EEG was mildly abnormal in wakefulness, but no epileptiform discharges or electrographic seizures were recorded.

On May 23, 2013, Claimant was seen at [REDACTED] [REDACTED] [REDACTED] for a followup regarding neck pain, left leg pain, and recent new onset seizure. It was reported that he had been admitted on May 7, 2013 after having multiple seizures within 24 hours and it was felt the seizures were drug related. An MRI of the lumbosacral spine and lumbosacral plexus showed asymmetry at the emergency of the sacral plexus area and a CT scan of the pelvis as well as an EMG and nerve conduction studies of the left lower extremity were recommended, but Claimant failed to show up for either appointment. A history of noncompliance with medical care by Claimant was noted. The impressions were as follows: neck pain secondary to degenerative disc disease of the cervical spine, atrophy of the quadriceps muscle on the left with hip and knee pain, new onset seizure most likely drug induced, and noncompliance with medical care.

On June 3, 2013, Claimant was assessed by [REDACTED] [REDACTED] [REDACTED] due to complaints of high anxiety, social anxiety, difficulty focusing, depressed mood, and difficulty completing tasks or work. He reported that he was independent with respect to the activities of daily living but experienced pain in his knee, back, neck and sometimes hands. He reported having injured himself a year ago doing "drunkin' gymnastics" causing injury to his neck and spine, which causes pain and numbness in his hands and arms. He reported substance abuse dependence with alcohol, and a long history of substance abuse and use. His mental status was observed as logical thought and logical but rapid speech. His mood was anxious but cooperative with appropriate affect. Claimant was diagnosed with major depressive disorder, recurrent, impulse-control disorder, not otherwise specified, and alcohol dependence, early full remission. His current Global Assessment Functioning was 60.

On June 6, 2013, a CT pelvis with IV and p.o. contrast showed no abnormality.

On December 17, 2013, Claimant was seen by Dr. [REDACTED] [REDACTED] with [REDACTED] [REDACTED] "for a third opinion". A mental status exam showed that Claimant's affect was blunted, mood was anxious, and thoughts were logical. Claimant complained of poor focus and poor concentration, and was convinced he has ADD. He was

diagnosed with bipolar disorder and history of polysubstance abuse and continued on Neurontin and prescribed Vivance, which is used for different types of ADD.

On January 27, 2014, Dr. [REDACTED] [REDACTED] completed a mental residual function capacity report, apparently based on his last examination of Claimant on December 17, 2013. In the report, Dr. [REDACTED] noted marked limitations with respect to Claimant's ability to understand and remember detailed instructions, carry out detailed instructions, maintain attention and concentration for extended periods, and perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances. Dr. [REDACTED] further noted that Claimant's prognosis was fair, and that he was compliant with treatment.

Claimant testified to the following symptoms and abilities: daily neck pain rendering it difficult to use his arms due to numbness and requiring Claimant to lay down for a few hours each day; difficulty with authority and getting along with other people; unable to put too much weight on his left leg, causing him to almost fall down every day. In his June 15, 2013 Activities of Daily Living questionnaire, Claimant reported that he prepares his own meals and works as a team with his girlfriend in meal preparation. He reported that he does laundry and vacuuming and some grocery shopping. He reported that he exercises three times a week, for one hour at a time, and he socializes daily with his mother and with other family and friends once or twice a week. He further reported that he attends AA meetings twice a week.

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 medical evidence establishing that he does have some physical and 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, or are expected to last, continuously for a period of twelve months or longer; 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 Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404.

In this case, the objective medical records establish treatment/diagnoses of bipolar disorder, polysubstance dependence (early full remission), neck pain, left leg pain, and seizures. However, the objective medical findings do not support Claimant's testimony regarding the extent or severity of his mental and physical impairments or the marked limitations suggested by Claimant's physician, Dr. [REDACTED] [REDACTED]. To be sure, the medical records indicate that Claimant was employed as a handyman as recently as

January 2013 and that he believed his efforts to find employment were hindered by his felony record. Likewise, the medical records indicate that Dr. ██████ saw Claimant only once – on December 17, 2013 – at which time, he noted that the Neurontin had been very effective in reducing Claimant’s back pain and smoothing out his mood swings. Moreover, in the ██████ ██████ ██████ ██████ ██████ completed by Dr. ██████ on January 27, 2014, apparently without a simultaneous evaluation of Claimant, Dr. ██████ noted that Claimant was compliant with treatment, contrary to Claimant’s medical history, which is replete with reference to Claimant’s noncompliance with treatment. Based on the foregoing, it is found that the Claimant’s impairment does not meet the intent and severity requirement of a listed impairment; therefore, Claimant cannot be found 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 additionally 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, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered non-exertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, there must be a comparison of the individual's residual functional capacity with the demands of past relevant work. *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 (i.e. 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.*

In the present case, Claimant has a less than gainful employment history consisting primarily of manual labor jobs. In light of Claimant's testimony, and in consideration of the Occupational Code, Claimant's prior work is classified as unskilled, medium work. In consideration of the Claimant's testimony, medical records, and current limitations, Claimant cannot be found able to return to past relevant work. 20 CFR 416.920(e). 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 would be considered to determine whether an adjustment to other work could be made. 20 CFR 416.920(4)(v). At the time of hearing, Claimant was 37 years old thus considered a younger individual for MA-P purposes. 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, based on the objective findings, it is found that the Claimant maintains the residual functional capacity for work activities on a regular and continuing basis to meet the physical and mental demands required to perform at least unskilled sedentary work as defined in 20 CFR 416.967(a). After review of the entire record finding no contradiction with any non-exertional impairment, and in consideration of Claimant's age, education, work experience, RFC, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rules 202.20 through 202.22, Claimant would be found not disabled at Step 5.

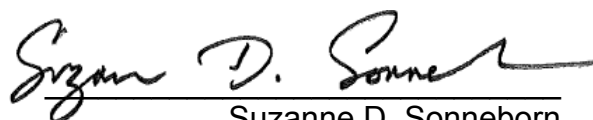
In this case, Claimant is found **not disabled** for purposes of the MA-P program; therefore, he is found **not disabled** for purposes of SDA benefit program.

DECISION AND ORDER

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

Accordingly, It is ORDERED:

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



Suzanne D. Sonneborn
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: February 20, 2014

Date Mailed: February 20, 2014

201368638/SDS

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;
- 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

SDS/hj

cc:

