

**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.: 14-006312
Issue No.: 4009
Case No.: ██████████
Hearing Date: October 13, 2014
County: Wayne-District 18

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 October 13, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant and ██████████, Claimant's friend. Participants on behalf of the Department of Human Services (Department) included ██████████, Medical Contact Worker.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional records. Claimant was ordered to obtain a Mental Residual Functional Capacity Assessment form, DHS-49E, signed by his psychiatrist. The document was received on October 27, 2014, and the record was closed. The matter is now before the undersigned for a final determination.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the State Disability Assistance (SDA) 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. On April 23, 2014, Claimant submitted an application for public assistance seeking SDA benefits.
2. On June 16, 2014, the Medical Review Team (MRT) found Claimant not disabled.

3. On June 23, 2014, the Department sent Claimant a Notice of Case Action denying the application based on MRT's finding of no disability.
4. On July 1, 2014, the Department received Claimant's timely written request for hearing.
5. Claimant alleged physical disabling impairment due to psoriasis and psoriatic arthritis.
6. Claimant alleged mental disabling impairment due to bipolar and panic disorder.
7. On the date of the hearing, Claimant was ■ years old with a ■, birth date; he is ■ in height and weighs about ■ pounds.
8. Claimant graduated from high school and is certified as a direct care worker and first responder.
9. Claimant has an employment history of work as a line worker at a fast-food establishment, a host at a restaurant, and a direct care worker for a high-functioning disabled person.
10. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

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 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180.

A disabled person is eligible for SDA. BEM 261 (July 2014), p. 1. An individual is disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA) benefits based on disability or blindness automatically qualifies. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

To determine whether an individual is disabled for SSI purposes, the trier of fact must apply a five-step sequential evaluation process and consider the following:

- (1) whether the individual is engaged in substantial gainful activity (SGA);
- (2) whether the individual's impairment is severe;
- (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404;
- (4) whether the individual has the residual functional capacity to perform past relevant work; and
- (5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (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).

In general, the individual has the responsibility to establish a disability 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, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 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, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

As outlined above, the first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered as not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Claimant has not engaged in SGA activity during the period for which assistance might be available. Therefore, Claimant is not ineligible under Step 1 and the analysis continues to Step 2.

Step Two

Under Step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in

death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

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 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the *de minimus* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985).

In the present case, Claimant alleges physical disability due to psoriasis and psoriatic arthritis and mental disabling impairment due to bipolar and panic disorder. The medical evidence presented at the hearing, and in response to the interim order, was reviewed and is summarized below.

In a June 5, 2013 patient assessment, Dr. Ghulam Qadir evaluated Claimant, noted his previous mental health history that included two admissions at [REDACTED], at [REDACTED] for cutting his face and at [REDACTED]. The doctor concluded that he had a long-standing history of emotional problems, panic attacks and social phobia and difficulty concentrating and listed a diagnosis of bipolar disorder and panic disorder w/o agoraphobia. His GAF score at that time was 50, consistent with his score the prior year. The suicide risk assessment showed prior suicide attempts. The doctor prescribed individual psychotherapy. The doctor's review notes from June 5, 2013 to April 17, 2014 show that Claimant met with [REDACTED] generally on a monthly basis and that he had ongoing complaints of mood swings, anxiety and panic attacks, and paranoid ideations. The notes generally show findings of impaired thought process and suicidal and homicidal ideation. There were also references to Claimant's marijuana use for pain mediation and indications that he was encouraged to treat his alcohol and substance abuse.

X-rays of Claimant's right wrist on July 9, 2013 following wrist injury showed no significant soft tissue swelling and no evidence of fracture or dislocation. X-rays of his right hand following finger pain showed subacute fracture of the fifth proximal phalanx.

A July 29, 2013 US duplex vascular abdomen and pelvis for left testicular pain showed bilateral testicular arterial flow. A scrotum ultrasound showed no intratesticular masses and bilateral testicular arterial flow, a left varicocele, and a tiny right epididymal cyst. On September 4, 2013, Claimant had an outpatient varicocelectomy of the left testicle. A medical note by [REDACTED] from September 4, 2013 showed a medical history of asthma and hepatitis and past surgical history for hand tendon surgery and hernia repair. On November 14, 2013, Claimant went to the emergency department because of testicle pain, was diagnosed with varicocele following an ultrasound of his scrotum and duplex vascular abdomen and pelvis, and discharged the same day in good condition.

On April 20, 2014, Claimant's physician, who had started seeing Claimant the previous month, completed a medical exam report, DHS-49, indicating that Claimant was diagnosed with psoriatic arthritis, with a negative RF and positive ANA (value 1:320). In his general exam, the doctor noted a psoriatic rash, synovitis of the right wrist and right and left PIP joints, and bipolar disorder and panic attacks based on psychiatric records. The doctor concluded that Claimant's condition was improving but because of multiple joint inflammation indicated the following limitations: (i) he could occasionally lift up to 10 pounds but never more; (ii) he could never use his hands or arms to grasp, reach, push/pull, or manipulate; (iii) he could never use his feet or legs to operate foot or leg controls. The doctor completed a disability parking application for Claimant indicating that his psoriatic arthritis was a permanent condition that severely limited his ability to walk.

On May 28, 2014, Claimant completed a consultative medical exam at the request of the Social Security Administration. Claimant reported to the doctor that he suffered from psoriatic arthritis, with pain particularly in his left hip and ankle and stiffness in both knees and shoulders, and psoriasis, with itching and skin lesions that bothered him in the shower. He also reported that he was diagnosed with bipolar depression at age [REDACTED] and had attempted suicide several times. In his physical exam of Claimant, the doctor noted some sensory loss in Claimant's right fingers and wrist due to a 2011 attempted suicide where he sliced his wrist. He concluded that Claimant suffered from psoriatic skin lesions and psoriatic arthritis but that his psoriasis was improving with his Humira treatment and his arthritis was also improving, noting that his gait was normal and there was no evidence of acute inflammation of the joints at the time. Based on his physical condition, the doctor concluded that Claimant could manipulate and raise his arms above his shoulders, reach out, finger, and do gross and fine activities using his upper extremities. With respect to his lower extremities, the doctor concluded that Claimant's gait was normal and he could walk a couple of blocks without difficulty. He noted that his range of motion of the lumbar spine was mildly limited and his left hip and left ankle range of motion was also limited. The doctor did limit Claimant to carrying 10 pounds and noted that he had difficulty getting on and off the exam table. He concluded, however, that Claimant's issues were primarily psychiatric.

On May 1, 2014 x-rays were obtained of Claimant's hip, lumbar spine, and pelvis. The hip and pelvic x-rays showed subtle bony excrescences from the femoral head neck junction bilaterally, which findings could be associated with FAI in the proper clinical setting, but no other morphologic abnormality. The spine x-ray showed normal lumbar sacral spine.

On May 7, 2014, a psychiatric evaluation of Claimant was completed by Dr. Hon Chan. The evaluation notes that Claimant advised the doctor that he needed documentation to support his disability case. The doctor listed Claimant's diagnosis as cannabis dependence, episodic use; major depressive disorder, recurrent, mild; and personality disorder. His most recent Global Functioning Assessment (GAF) score was listed as 50. The doctor noted that he had constricted affect, evasive behavior, anxious mood, and poor insight and judgment. His posture, motor status, speech, thought process, memory and cognition were deemed unremarkable. The doctor recommended outpatient substance abuse treatment.

On May 8, 2014, Claimant was diagnosed with costochondritis during an urgent care visit.

On October 14, 2014, a psychiatrist at [REDACTED], the mental health clinic Claimant frequented, completed a mental residual functional capacity assessment, DHS-49-E, regarding Claimant's mental impairments and how they affected his activities. The psychiatrist concluded that Claimant had no, or no significant, limitations regarding his ability to (i) ask simple questions or request assistance; (ii) be aware of normal hazards and take appropriate precautions; and (iii) set realistic goals or make plans independently of others. The psychiatrist concluded that Claimant had moderate limitations regarding his ability to (i) remember locations and work-like procedures, (ii) understand and remember one or two-step instructions, (iii) carry out simple one or two step instructions; (iv) sustain an ordinary routine without supervision; (v) work in coordination with or proximity of others without being distracted by them; (vi) make simple work-related decision; (vii) interact appropriately with the general public; (viii) get along with co-workers or peers without distracting them or exhibiting behavioral extremes; (ix) maintain socially appropriate behavior and adhere to basic standards of neatness and cleanliness; (x) respond appropriately to change in the work setting; and (xi) travel in unfamiliar places or use public transportation. The psychiatrist concluded that Claimant had marked limitations regarding his ability to (i) understand and remember detailed instructions; (ii) carry out detailed instructions; (iii) maintain attention and concentration for extended periods; (iv) perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; (v) complete a normal workday and worksheet without interruptions from psychologically based symptoms and perform at a consistent pace without an unreasonable number and length of rest periods; and (vi) accept instructions and respond appropriately to criticisms from supervisors.

In consideration of the de minimus standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Claimant

suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 90 days. Therefore, Claimant has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

The evidence shows diagnosis of, and treatment for, psoriasis and psoriatic arthritis and bipolar and panic disorder. Based on the objective medical evidence of psoriasis, Listing 8.00 (skin disorders), particularly 8.05 (dermatitis) was reviewed. The severity of a skin disorder is based on the extent of the skin lesion; the frequency of flare-ups of skin lesions; how symptoms, including pain, limit the client; the extent of treatment; and how treatment affects the client. 8.00(C). A listing under 8.05 requires extensive skin lesions that persist for at least 3 months despite continuing treatment. Extensive skin lesions are those that involve multiple body sites or critical body areas and result in very serious limitations. Listing 8.00(C)(1). Claimant's medical record in this case is not sufficient to support a finding that his psoriasis meets a listing under 8.00. To the contrary, in the May 28, 2014 consultative medical exam, the doctor noted that Claimant's psoriasis was improving with his Humira treatment.

With respect to Claimant's diagnosis of, and treatment for, psoriatic arthritis, Listing 1.00 (musculoskeletal system), particularly 1.02 (major dysfunction of a joint) and 1.04 (disorders of the spine) was reviewed. To meet a listing under 1.00, the client must have a functional loss, which involves the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. Claimant's medical record does not establish a compromise of a nerve root necessary to support a listing for disorders of the spine under 1.04 or an inability to ambulate effectively to support a listing for dysfunction of a joint under 1.02(A). To support a listing for dysfunction of a joint under 1.02(B), the client must have an inability to perform fine and gross movements effectively. A July 19, 2013, x-ray of Claimant's right wrist showed subacute fracture of the fifth proximal phalanx. In his April 20, 2014, medical exam report, Claimant's physician, who had only recently started seeing Claimant, noted that Claimant had synovitis of the right wrist and right and left IPF joints and concluded that Claimant could never use his hands or arms to grasp, reach, push/pull, or manipulate. However, only a month later, in a May 28, 2014, consultative medical exam, the consulting physician noted that Claimant has some sensory loss in his right fingers and wrist due to a 2011 attempted suicide but there was no evidence of acute inflammation of the joints at the time and that, based on his physical condition, Claimant could manipulate and raise his arms above his

shoulders, reach out, finger and do gross and fine activities using his upper extremities. This evidence was insufficient to support the severity necessary to support a listing under 1.02(B).

Claimant's medical records also showed diagnosis of, and treatment for, bipolar disorder and panic attacks. Listing 12.00, particularly Listings 12.04 (affective disorders) and 12.06 (anxiety-related disorders) were reviewed. Claimant's medical records do not support a finding that the level of severity of impairments is sufficient to meet, or equal, the requirements in either listing.

Accordingly, the evidence does **not** show that Claimant's impairments due to his psoriasis, psoriatic arthritis, bipolar disorder, or panic disorder meet, or are equal to, the required level of severity of a listing to be considered as disabling without further consideration.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Step 4, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. Impairments, and any related symptoms, may cause physical and mental limitations that affect what a person can do in a work setting. 20 CFR 416.945(a)(1). RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s) and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4). The RFC takes into consideration the total limiting effects of all impairments, including those that are not severe. 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants 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).

Limitations can be exertional, non-exertional, or a combination of both. 20 CFR 416.969a. If the limitations and restrictions imposed by the individual's impairment(s) and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). To determine the exertional requirements, or physical demands, of work in the national

economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a).

Sedentary work.

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 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. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the 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. 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. If someone can do light work, . . . he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

Medium work.

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, . . . he or she can also do sedentary and light work.

Heavy work.

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, . . . he or she can also do medium, light, and sedentary work.

Very heavy work.

Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, . . . he or she can also do heavy, medium, light, and sedentary work. 20 CFR 416.967.

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only non-exertional limitations or restrictions. 20 CFR 416.969a(a) and (c). 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 (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).

In this case, Claimant alleges both exertional and non-exertional limitations due to his medical condition.

Claimant's medical record shows that on April 20, 2014, Claimant's doctor, who had only recently started treating him, diagnosed Claimant with psoriatic arthritis, with a negative RF and positive ANA (value 1:320) and psoriasis. The doctor concluded that Claimant's condition was improving but, based on his physical exam showing synovitis of the right wrist and right and left IP joints, he identified the following limitations: (i) he could occasionally lift up to 10 pounds but never more; (ii) he could never use his hands or arms to grasp, reach, push/pull, or manipulate; (iii) he could never use his feet or legs to operate foot or leg controls. The doctor completed a disability parking application for Claimant indicating that his psoriatic arthritis was a permanent condition that severely limited his ability to walk.

In the May 28, 2014, consultative medical exam, the consulting doctor noted some sensory loss in Claimant's right fingers and wrist due to a 2011 attempted suicide and concluded that Claimant suffered from psoriatic skin lesions and psoriatic arthritis but that his psoriasis was improving with his Humira treatment and his arthritis was also improving, noting that his gait was normal and there was no evidence of acute inflammation of the joints at the time. Based on his physical condition, the doctor concluded that Claimant could manipulate and raise his arms above his shoulders, reach out, finger, and do gross and fine activities using his upper extremities. With respect to his lower extremities, the doctor concluded that Claimant's gait was normal and he could walk a couple of blocks without difficulty. He noted that his range of motion of the lumbar spine was mildly limited and his left hip and left ankle range of motion was also limited. The doctor did limit Claimant to carrying 10 pounds and noted that he had difficulty getting on and off the exam table.

On May 1, 2014 x-rays were obtained of Claimant's hip, lumbar spine, and pelvis. The hip and pelvic x-rays showed subtle bony excrescences from the femoral head neck junction bilaterally, which findings could be associated with FAI in the proper clinical setting, but no other morphologic abnormality. The spine x-ray showed normal lumbar sacral spine.

With respect to his physical limitations, Claimant testified that he could walk a half or full block with a prescribed cane but he has fallen because his ankles give out; he can't squat or bend due to his lower back issues; he can use stairs if there are not many; he can stand; he can sit although he sometimes has problems with stiffness if he sits too long; and he has some issues with limited range of motion in his arms and legs. He testified that he had problems with gripping and grasping because of limited finger mobility, resulting in problems picking up change, opening a car door, and putting on his shoes. He lives with two roommates and is able, with difficulty, to bathe and care for his own hygiene. He accommodates his dress due to his loss of finger mobility to not have buttons, zippers or ties on his clothing and shoes. One of his roommates does most of the cooking and cleaning because he had problems turning knobs. He sometimes drives, unless he is having a bad day, and shops with assistance.

With respect to Claimant's exertional limitations, a review of the entire record particularly the lifting restrictions noted by both Claimant's treating physician and the

consulting physician, and Claimant's testimony, it is found that Claimant maintains the physical capacity to perform, at most, sedentary work as defined by 20 CFR 416.967(a).

Claimant also alleged non-exertional limitations due to his mental condition. For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. Id.; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of mental functional limitation. 20 CFR 416.920a(c)(3). The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. Id. The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. Id.

In this case, Claimant testified that he was diagnosed with bipolar and panic disorder in 2009; he has anxiety because of his skin condition and how it is perceived by others; he has crying spells and anger issue that resulted in him cutting his face open in June 2011 and needing 31 stitches; he has a learning disability and has short-term memory and comprehension issues; and he had been hospitalized following a suicide attempt. He agreed that he was doing better on his medication.

In this case, Claimant's record shows that he was receiving regular, ongoing treatment beginning 2013 for bipolar and panic disorder, with ongoing complaints of mood swings, anxiety and panic attacks, and paranoid ideations. However, in a May 7, 2014 psychiatric evaluation, the [REDACTED] doctor listed Claimant's diagnosis as cannabis dependence, episodic use; major depressive disorder, recurrent, mild; and personality disorder. His GAF score was 50. The doctor noted that Claimant had constricted affect, evasive behavior, anxious mood and poor insight and judgment. However, his posture, motor status, speech, thought-process, memory and cognition were deemed unremarkable. A mental residual functional capacity assessment completed by a [REDACTED] doctor on October 14, 2014 found that Claimant was moderately limited in understanding and memory; moderately to markedly limited in sustained concentration and persistence; moderately limited in social interaction; and moderately limited in adaption.

Based on the medical record presented, as well as Claimant's testimony, Claimant has moderate limitations on his mental ability to perform basic work activities.

Claimant's RFC is considered at both steps four and five. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Claimant's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). 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). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. 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).

As determined in the RFC analysis above, Claimant is limited to no more than sedentary work activities and has moderate limitations in his mental capacity to perform basic work activities. Claimant's work history in the 15 years prior to the application consists of work as a as a line worker at a fast-food establishment (medium, unskilled), a host at a restaurant (light, unskilled), and a direct care worker for a high-functioning disabled person (sedentary to light, unskilled). In light of the entire record and Claimant's RFC, including his mental limitations, it is found that Claimant is unable to perform past relevant work. Accordingly, Claimant cannot be found disabled, or not disabled, at Step 4 and the assessment continues to Step 5.

Step 5

In Step 5, an assessment of Claimant's RFC 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). If the individual can adjust to other work, then there is no disability. Disability is found if an individual is unable to adjust to other work.

At this point in the analysis, the burden shifts from Claimant to the Department to present proof that Claimant has the RFC to obtain and maintain 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 2, 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). However, 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). When a person has a combination of exertional and non-exertional limitations or restrictions, the rules pertaining to the strength limitations provide a framework to guide the disability determination unless there is a rule that directs a conclusion that the individual is disabled based upon strength limitations. 20 CFR 416.969a(d).

In this case, at the time of hearing, Claimant was [REDACTED] years old and, thus, considered to be a younger individual (age 18-44) for MA-P purposes. He is a high school graduate, who testified that he could read and write at a [REDACTED] grade level, with a history of unskilled work experience. As discussed above, Claimant maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform sedentary activities and has moderate limitations on his mental ability to perform work activities. The Medical-Vocational Guidelines to not result in a disability finding based on Claimant's physical impairments. However, after review of the entire record, including Claimant's testimony, and in consideration of Claimant's age, education, work experience, mental and physical RFC, Claimant is found disabled at Step 5 for purposes of SDA benefit program.

It is noted that Claimant's medical record, particularly the May 7, 2014 psychiatric evaluation, references episodic cannabis use. At the hearing, Claimant admitted that he used marijuana for medicinal purposes and was seeking a medical marijuana card. In light of the other other psychiatric diagnoses of major depressive disorder, recurrent, mild and personality disorder, and the limitations cited in the mental residual functional capacity assessment, coupled with Claimant's physical limitations, Claimant's drug use is not a material contributing factor to his disability.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Claimant disabled for purposes of the SDA benefit program.

Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Process Claimant's April 23, 2014, SDA application to determine if all the other non-medical criteria are satisfied and notify Claimant of its determination;
2. Supplement Claimant for lost benefits, if any, that Claimant was entitled to receive if otherwise eligible and qualified;
3. Review Claimant's continued eligibility in July 2015.



Alice Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **11/26/2014**

Date Mailed: **11/26/2014**

ACE / tlf

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

CC: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

