

6. Claimant completed education through the 9th grade. He was in special education.
7. Claimant has employment experience (last worked 2008) as a tree trimmer ■■■■■ which required him to stand and walk the entire shift and lift over 50 pounds. He also worked in a factory which required him to stand and walk the entire shift and lift under 5 pounds.
8. Claimant's limitations have lasted for 12 months or more.
9. Claimant suffers from depression, anxiety, panic attacks, post-traumatic stress syndrome, asthma, emphysema and sleep apnea.
10. Claimant has some limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.
11. Claimant has some limitations on understanding, carrying out, and remembering simple instructions; use of judgment; responding appropriately to supervision, co-workers and usual work situations; and dealing with changes in a routine work setting.

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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. Under SSI, 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 set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is “severe” or a combination of impairments that is “severe.” 20 CFR 404.1520(c). An impairment or combination of impairments is “severe” within the meaning of regulations if it significantly limits an individual’s ability to perform basic work activities. An impairment or combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the claimant’s residual functional capacity. 20 CFR 404.1520(e). An individual’s residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, the trier must consider all of the claimant’s impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the claimant has the residual functional capacity to do his/her past relevant work, then the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual’s residual functional capacity is considered in determining whether disability exists. An individual’s age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Here, Claimant has satisfied requirements as set forth in steps one, two and three of the sequential evaluation. However, Claimant’s impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Therefore, vocational factors will be considered to determine Claimant’s residual functional capacity to do relevant work.

In the present case, Claimant has been diagnosed with depression, anxiety, panic attacks, post-traumatic stress syndrome, asthma, emphysema and sleep apnea. Claimant has a number of symptoms and limitations, as cited above, as a result of these conditions.

██████████ Claimant underwent a bilateral carotid duplex study. This revealed a normal carotid duplex study. On this same date, an echocardiogram was also administered which revealed a normal left ventricular chamber size with mild concentric hypertrophy and normal contractile performance. No evidence of any significant structural abnormality of any of the valves. Trace mitral and tricuspid insufficiency. There were normal aortic flow patterns and no pericardial effusion.

██████████ Claimant was seen by a physician who noted diagnoses of COPD without exacerbation; OSA, unspecified. This physician noted advising Claimant of the dangers of smoking.

██████████ Claimant underwent a pulmonary function test. This resulted in the following findings: no obstructive impairment; insignificant bronchodilator response indicating no reactive airway disease; no evidence of restrictive airway disease.

██████████ Claimant went to the emergency room after losing consciousness while at home. He was admitted and treated. Claimant was discharged with the following diagnoses: syncopal episode; hypokalemia; hyponatremia; hypertension; COPD; obstructive sleep apnea; and anxiety. Claimant underwent an echocardiogram which revealed no structural abnormality and an ejection fraction of 68%. An ultrasound carotid doppler was performed with no obstruction. A CT angiogram was performed and there was no obstruction, no PE and no dissection. A chest x-ray revealed no abnormalities. A CT of the head revealed no intracranial process. Claimant was discharged in stable condition ██████████.

██████████ Claimant was seen by a physician who noted diagnosis of COPD without exacerbation; OSA, unspecified. This physician noted advising Claimant of the dangers of smoking.

██████████ Claimant underwent an x-ray of the left scapula and left clavicle. These x-rays revealed a normal examination of the left scapula and osteoarthritis of the overlying acromioclavicular joint.

██████████ Claimant was examined. This physician noted Claimant's diagnosis as COPD without exacerbation; OSA, unspecified. This physician noted advising Claimant of the dangers of smoking.

Claimant's mental health records reveal non-compliance and/or abuse of his medications. Claimant was a no show for seven of his scheduled therapy appointments between ██████████

██████████ Claimant ran out of his medications. He was noted to have a scattered thought process. His mood was euthymic. He reported problems with sleeping.

██████████ Claimant's therapist noted Claimant reporting he was taking more Xanax than he was prescribed to be taking in a day. He was noted to be oriented to normal time, place and person and had difficulty recalling recent and remote memories. He had fair judgment and insight. His mood was noted to be sad and affect congruent with mood. He was noted to have not filled one of his prescriptions because he felt he did not need the medication. His diagnosis was major depression disorder, recurrent MILD.

██████████ Claimant's therapist noted Claimant reporting he was taking more Xanax than he was prescribed to be taking in a day. Claimant also stopped taking one of his prescribed medications for his mental condition. He was noted to be oriented to normal time, place and person and had difficulty recalling recent and remote memories. He had fair judgment and insight. His mood was noted to be dysphoric and bland. His diagnosis was major depression disorder, recurrent MILD.

██████████ Claimant's therapist noted Claimant reporting he was taking more Xanax than he was prescribed to be taking in a day. He was noted to be oriented to normal time, place and person and had difficulty recalling recent and remote memories. He had fair judgment and insight. His mood was noted to be euthymic and affect congruent with mood. His diagnosis was major depression disorder, recurrent MILD.

██████████ Claimant's therapist noted Claimant reporting he was taking more Xanax than he was prescribed to be taking in a day. He was noted to be distractible and had difficulty recalling recent and remote memories. He had fair judgment and insight. He reported difficulties sleeping. His speech was slow, showed limited eye contact and was anxious. His diagnosis was major depression disorder, recurrent MILD.

Claimant testified to the following symptoms and abilities: both knees have issues with swelling, shortness of breath, lower back pain, hip pain, shoulder pain, fingers and elbows hurt, not able to handle temperature extremes due to breathing problems, panic and anxiety attacks occur once or twice per day, isolates himself, believes people are out to get him, doesn't like to have people close to him, avoids going to family functions, feelings of worthlessness, suicidal thoughts occurring every other day, no hallucinations, struggles with his appetite fluctuating in extremes, needs reminders to take medications, needs reminders to shower, will go several days without showering, struggles with sleeping at night, racing thoughts, poor concentration, needs reminders to clean, can handle short shopping trips, can walk a half block before breathing problems and pain increases, can stand 15 minutes, can sit 15 minutes, takes naps during the day, tired and fatigued, struggles with headaches, able to manage personal

care, struggles with driving due to his panic attacks and crying spells occurring 2-3 times a month.

Claimant alleged a greater degree of restriction and symptoms than the medical records provided would support. Claimant's testimony regarding his abilities and symptoms was found to be less than credible. Claimant appeared to be exaggerating his issues.

The fourth step of the analysis to be considered is whether the claimant has the ability to perform work previously performed by the claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the claimant from doing past relevant work. In the present case, Claimant's past employment was as a tree trimmer [REDACTED] which required him to stand and walk the entire shift and lift over 50 pounds. He also worked in a factory which required him to stand and walk the entire shift and lift under 5 pounds. Claimant's issues as noted by his medical records would indicate that Claimant should avoid using machinery. This Administrative Law Judge finds, based on the medical evidence and objective, physical, and psychological findings, that Claimant is not capable of the physical or mental activities required to perform any such position. 20 CFR 416.920(e).

In the final step of the analysis, the trier of fact must determine if the claimant's impairment(s) prevent the claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

1. residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and
3. the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite her limitations. 20 CFR 416.966.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

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. 20 CFR 416.967(a).

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. 20 CFR 416.967(b).

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, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

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, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

See *Felton v DSS* 161 Mich App 690, 696 (1987). Once the claimant makes it to the final step of the analysis, the claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 732 F2d 962 (6th Cir, 1984). Moving forward, the burden of proof rests with the State to prove by substantial evidence that the claimant has the residual function capacity for SGA.

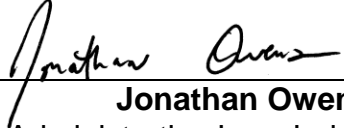
This Administrative Law Judge finds that Claimant has the residual functional capacity to perform work at least at a light work level. Claimant and/or his representative have not presented objective medical evidence to establish that Claimant would be incapable of performing at least sedentary employment. The mental health records submitted for consideration fail to indicate a marked mental health impairment. Claimant's treating records indicate MILD Major Depression.

Claimant is an individual of younger age. 20 CFR 416.963. Claimant has a limited education. 20 CFR 416.964. Claimant's previous work was unskilled. Federal Rule 20 CFR 404, Subpart P, Appendix 2, contains specific profiles for determining disability based on residual functional capacity and vocational profiles. Under Table I, Rule 201.18, Claimant is not disabled for purposes of the Medical Assistance program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is not medically disabled.

Accordingly, the Department's decision is hereby UPHELD.



Jonathan Owens
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **11/3/2014**

Date Mailed: **11/3/2014**

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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]