

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2013-41791  
Issue No(s): 2009  
Case No.: [REDACTED]  
Hearing Date: August 12, 2013  
County: Wayne (82)

**ADMINISTRATIVE LAW JUDGE:** Susan C. Burke

**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 hearing was held on August 12, 2013, in Detroit, Michigan. Participants on behalf of Claimant included Claimant and Claimant's Authorized Hearing Representative, [REDACTED], [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical records. The evidence was received, reviewed, and forwarded to the State Hearing Review Team (SHRT) for consideration. On [REDACTED], this office received the SHRT determination which found Claimant not disabled. This matter is now before the undersigned for a final decision.

**ISSUE**

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) 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. Claimant submitted an application for public assistance seeking MA benefits and retroactive MA benefits on [REDACTED]

2. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not disabled.
3. The Department notified Claimant of the MRT determination on [REDACTED].
4. On [REDACTED] the Department received Claimant's timely written request for hearing.
5. On [REDACTED], the State Hearing Review Team found Claimant not disabled.
6. During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical records. The evidence was received at the hearing, reviewed, and forwarded to SHRT for consideration. On [REDACTED], this office received the SHRT determination, which found Claimant not disabled.
7. At the time of the hearing, Claimant was 23 years old with a birth date of [REDACTED].
8. Claimant has a high school education.
9. Claimant was not working at the time of the hearing.
10. Claimant has a relevant work history as a tire changer, barber, housekeeper, factory worker, and food preparation worker.
11. Claimant suffered a gunshot wound to the thigh and buttock and has back pain.
12. Claimant's impairments have lasted, or are expected to last, continuously for a period of twelve months or longer.
13. Claimant's complaints and allegations concerning his impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis, for a closed period of time.

### **CONCLUSIONS OF LAW**

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. Department policies are found in the Bridges Administrative Manual (“BAM”), the Bridges Eligibility Manual (“BEM”), and the Bridges Reference Tables (“RFT”).

Federal regulations require that the Department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

...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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. (SGA) 20 CFR 416.924(b).

In this case, Claimant is not currently working. Claimant testified credibly that he is not currently working and the Department presented no contradictory evidence. Therefore, Claimant is not disqualified for MA at this step in the sequential evaluation process.

Second, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment expected to last twelve months or more (or result in death) which significantly limits an individual’s physical or mental ability to perform basic work activities. The term “basic work activities” means the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6<sup>th</sup> Cir, 1988). As a result, the Department may only screen out claims at this level which are “totally groundless” solely from a medical standpoint. The *Higgs* court used the severity requirement as a “*de minimus* hurdle” in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

In this case, medical evidence has clearly established that Claimant has an impairment (or combination of impairments) that has more than a minimal effect on Claimant’s work activities.

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, meets or medically equals the criteria of an impairment listed in Appendix 1 of Subpart P of 20 CFR, Part 404. (20 CFR 416.920 (d), 416.925, and 416.926.) This Administrative Law Judge finds that the Claimant’s medical record will not support a finding that Claimant’s impairment(s) is a “listed impairment” or is medically equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A.

In the present case, Claimant alleged disability due to gunshot wound to the right leg, back pain, muscle problems, mental capacity and possible mental impairment, personality, changes, mood swings, problems getting along with others, erectile dysfunction and mood swings. (Exhibit 1, p. 4)

Listing 1.00 states in part:

**1.00 Musculoskeletal System**

A. Disorders of the musculoskeletal system may result from hereditary, congenital, or acquired pathologic processes. Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases.

B. Loss of function.

1. General. Under this section, loss of function may be due to bone or joint deformity or destruction from any cause; miscellaneous disorders of the spine with or without radiculopathy or other neurological deficits; amputation; or fractures or soft tissue injuries, including burns, requiring prolonged periods of immobility or convalescence. The provisions of 1.02 and 1.03 notwithstanding, inflammatory arthritis is evaluated under 14.09 (see 14.00D6).

Impairments with neurological causes are to be evaluated under 11.00ff.

2. How we define loss of function in these listings.

a. General. Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as 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. The inability to ambulate effectively or the inability to perform fine and gross movements effectively must have lasted, or be expected to last, for at least 12 months. For the purposes of these criteria, consideration of the ability to perform these activities must be from a physical standpoint alone. When there is an inability to perform these activities due to a mental

impairment, the criteria in 12.00ff are to be used. We will determine whether an individual can ambulate effectively or can perform fine and gross movements effectively based on the medical and other evidence in the case record, generally without developing additional evidence about the individual's ability to perform the specific activities listed as examples in 1.00B2b(2) and 1.00B2c.

b. What we mean by inability to ambulate effectively.

(1) Definition. Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities.

No medical records indicate that Claimant used a walker for twelve months after discharge from the hospital in [REDACTED]. Claimant testified that he used a cane as of the date of the hearing to assist him in walking, which would not limit the use of functioning of both upper extremities. In addition, the [REDACTED] medical report indicated that Claimant could ambulate without the use of an assistive device. Therefore, Claimant is not found disabled based on the medical evidence alone with respect to Listing 1.00.

Listing 12.00 encompasses adult mental disorders. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. (12.00A.) The existence of a medically determinable impairment(s) of the required duration must be established through medical evidence consisting of symptoms, signs, and laboratory findings, to include psychological test findings. (12.00B.) The evaluation of disability on the basis of a mental disorder requires sufficient evidence to (1) establish the presence of a medically determinable mental impairment(s), (2) assess the degree of functional

limitation the impairment(s) imposes, and (3) project the probable duration of the impairment(s). (12.00D.)

Listing 12.04 defines affective disorders as being characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Generally, affective disorders involve either depression or elation. The required level of severity for these disorders is met when the requirements of both A and B are satisfied, or when the requirements in C are satisfied.

- A. Medically documented persistence, either continuous or intermittent, of one of the following:
  - 1. Depressive syndrome characterized by at least four of the following:
    - a. Anhedonia or pervasive loss of interest in almost all activities; or
    - b. Appetite disturbance with change in weight; or
    - c. Sleep disturbance; or
    - d. Psychomotor agitation or retardation; or
    - e. Decreased energy; or
    - f. Feelings of guilt or worthlessness; or
    - g. Difficulty concentrating or thinking; or
    - h. Thoughts of suicide; or
    - i. Hallucinations, delusions, or paranoid thinking; or
  - 2. Manic syndrome characterized by at least three of the following:
    - a. Hyperactivity; or
    - b. Pressure of speech; or
    - c. Flight of ideas; or
    - d. Inflated self-esteem; or
    - e. Decreased need for sleep; or
    - f. Easy distractibility; or
    - g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
    - h. Hallucinations, delusions, or paranoid thinking; or
  - 3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes)

AND

- B. Resulting in at least two of the following:

1. Marked restriction on activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration;

OR

- C. Medically documented history of chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:
1. Repeated episodes of decompensation, each of extended duration; or
  2. A residual disease process that has resulted in such marginal adjustment that even minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
  3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

The medical records do not support a finding that Claimant can be found to be disabled based upon medical evidence alone with regard to mental disorders. 20 CFR 416.920(d).

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the Claimant has the residual functional capacity (RFC) to perform the requirements of Claimant's past relevant work. 20 CFR 416.920(a) (4) (iv).

An individual's residual functional capacity is the individual's ability to do physical and mental work activities on a sustained basis despite limitations from the individual's impairments. Residual functional capacity 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. Residual functional capacity is the most that can be done, despite the limitations. In making this finding, the trier of fact must consider all of the Claimant's impairments, including impairments that are not severe (20 CFR 416.920 (e) and 416.945; SSR 96-8p.) Further, a residual functionally capacity assessment must be based on all relevant evidence in the case record, such as medical history, laboratory findings, the effects of treatments (including limitations or restrictions

imposed by the mechanics of treatment), reports of daily activities, lay evidence, recorded observations, medical treating source statements, effects of symptoms (including pain) that are reasonably attributed to the impairment, and evidence from attempts to work. SSR 96-8p.

The term past relevant work means work performed (either as Claimant actually performed it or as it is generally performed in the national economy) within the last fifteen years or fifteen years prior to the date that disability must be established. In addition, the work must have lasted long enough for the Claimant to learn to do the job and have been substantially gainfully employed (20 CFR 416.960 (b) and 416.965.) If Claimant has the residual functional capacity to do Claimant's past relevant work, Claimant is not disabled. 20 CFR 416.960(b)(3). If Claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

The medical information indicates that Claimant was hospitalized in [REDACTED] due to a gunshot wound. Claimant was discharged in [REDACTED] and was able to ambulate with a walker. (Exhibit 1, p. 54) Claimant testified credibly at the hearing on [REDACTED], that he was unable to stand for long period times or keep pace in physical jobs. Claimant used a cane at the hearing. Claimant testified at the hearing that he could sit an hour to an hour and a half due to the soreness in his buttocks and down his leg. [REDACTED] Claimant was seen medically for leg pain. Claimant presented to the medical exam without the assistance of an ambulatory device. Claimant stated at the exam that he could sit for two hours, stand for 10 minutes and walk for 10 minutes. The medical source statement described Claimant as having a normal gait and no physical limitation of sitting, standing and walking.

Claimant's past relevant work included work as a tire changer, barber, housekeeper, factory worker, and food preparation worker. Given the functional requirements as stated by Claimant for these jobs (which is consistent with how these jobs are typically performed), and Claimant's functional limitations as described above, this Administrative Law Judge concludes that Claimant does not retain the capacity to perform his past relevant work.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the Claimant's impairment(s) prevents 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 his/her limitations. 20 CFR 416.966.

See *Felton v DSS*, 161 Mich. App 690, 696 (1987). Once Claimant reaches Step 5 in the sequential review process, Claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6<sup>th</sup> Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that the Claimant has the residual functional capacity for substantial gainful activity.

For the purpose of determining the exertional requirements of work in the national economy, jobs are classified as “sedentary”, “light”, “medium”, “heavy”, and “very heavy.” 20 CFR 416.967. These terms have the same meaning as are used in the *Dictionary of Occupational Titles*. 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 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 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 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) 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 order to evaluate the Claimant's skills and to help determine the existence in the national economy of work the Claimant is able to do, occupations are classified as unskilled, semiskilled and skilled. SSR 86-8.

Claimant is twenty-three years old, with a high school education, (20 CFR. 416.968 (c)) and a work history performed at the light to heavy level. (20 CFR 416.967). Claimant's medical records are consistent with Claimant's testimony that Claimant was unable to engage in even a full range of sedentary work from July of 2012 through the date of the hearing, August 12, 2013. See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986).

However, as of [REDACTED], Claimant's medical condition improved to the extent that Claimant was able to perform sedentary work. Claimant's medical records are consistent with Claimant's testimony that Claimant has the residual functional capacity limited to sedentary work as of [REDACTED]. . 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, 201.27, Claimant is found not disabled for purposes of the Medical Assistance program as of [REDACTED].

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 disabled for purposes of the MA benefit program from [REDACTED] through [REDACTED], and not disabled for purposes of the MA benefit program as of [REDACTED].

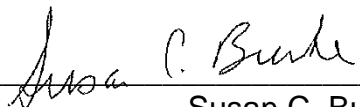
**DECISION AND ORDER**

Accordingly, the Department's determination that Claimant is not disabled, [REDACTED] and ongoing, is AFFIRMED.

The Department's determination that Claimant is not disabled for the closed period of [REDACTED] through [REDACTED] is REVERSED.

THE DEPARTMENT IS ORDERED TO INITIATE 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. The Department shall initiate processing of the [REDACTED] application and retroactive application to [REDACTED] for the closed period of [REDACTED] through [REDACTED], to determine if all other non-medical criteria are met.
2. Inform Claimant of the determination in accordance with Department policy.

  
\_\_\_\_\_  
Susan C. Burke  
Administrative Law Judge  
For Maura Corrigan, Director  
Department of Human Services

Date Signed: 6/9/2014

Date Mailed: 6/9/2014

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

The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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

SCB/hw

cc:

