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

IN THE MATTER OF:

[redacted]

Reg. No.: 2013 51489
Issue No.: 2009, 4009
Case No.: [redacted]
Hearing Date: November 12, 2013
County: Wayne DHS (35)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 November 12, 2013, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included [redacted]

ISSUE

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

FINDINGS OF FACT

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

1. On June 4, 2012, Claimant applied for MA-P and SDA.

2. On January 26, 2013, the Medical Review Team denied Claimant's request for SDA. On April 8, 2013 the Medical Review Team. Denied Claimant's request for MA-P.

3. The Department sent the Claimant the Notice of Case Action dated May 22, 2013 denying the Claimant's MA-P application and SDA application.

4. On June 1, 2013, the Claimant submitted to the Department a timely hearing request.

5. On August 5, 2013, the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.

6. An Interim Order was issued on November 18, 2013 requesting that the Claimant obtain a completed DHS 49 from Dr. Houria Hassouna, one of his treating doctors. The DHS 49 was not submitted by the Claimant.

7. May 23, 2014, the State Hearing Review Team denied Claimant's request and found Claimant not disabled.

8. Claimant at the time of the hearing was 44, with a [redacted] birth date. Claimant height was 5 '11" and weighed 215 pounds.

9. Claimant completed college and has a Master's Degree in Finance. At the time of the hearing, the Claimant was working part time as a substitute teacher. Prior to that work, the Claimant was a cost analyst performing cost accounting. From 2000 to 2007, he was a cost analyst for both an auto company, and prior to that a book company.

10. The Claimant has alleged mental disabling impairments including manic-depressive disorder. The Claimant at the time of the hearing was not receiving any outpatient treatment and had treated only for several months in 2012.

11. Claimant has alleged physical disabling impairments including deep vein thrombosis.

12. The Claimant has alleged mental disabling impairments including manic depression.

CONCLUSIONS OF LAW

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

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program purusant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impariment which meets federal SSI disability standards for at least ninety days.

Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

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).

The Claimant has alleged mental disabling impairments due to manic depression. Claimant has alleged physical disabling impairments due to deep vein thrombosis.

A summary of the Claimant's medical evidence presented at the hearing and the new evidence presented follows.

On April 18, 2014 a test of the Claimant's heart was performed by a cardiologist. The final impression noted sinus rhythm with periods of bradycardia. Normal L V size, function, wall motion and ejection fraction 60% to 65%. Mild left atrial dilatation, mitral, aortic and tricuspid motions were normal, minimal physiological mitral and tricuspid regurgitation, grade 1 diastolic dysfunction or abnormal LV relaxation. No pericardial effusion. IVC was not seen.

On April 18, 2014, five views of the lumbar spine were taken by x-ray. Impression was moderate lumbar scoliosis without acute process. Mild to moderate diffuse lumbar spine degenerative disc disease and teased generative joint disease contributing to mild L4 – L5 canal stenosis.

A 1986 radiology report with regard to the Claimant's scoliosis a radiology report confirmed that cervical and thoracic spines continue to appear normal unchanged since April 1981 impression minimal progression in the appearance of rotational levo scoliosis of the upper lumbar spine.

A progress note dated August 1, 2012 contained April and May 2012 notes. The last note in May 2012 noted Claimant was manic and needed to treat himself with medication. At that time, a referral to the doctor was made and the Claimant declined treatment due to not wanting additional medications. At that time, also the Claimant was diagnosed as most likely bipolar disorder, not at risk to himself or others. At the time of the examination, the Claimant was anxious, pacing, and had pressured speech but no delusions or hallucinations, and was oriented to person, place, and time. His demeanor was very pleasant and talkative. There were no bizarre unusual behaviors noted. There was no increase in calf or leg swelling noted bilaterally.

The Claimant was hospitalized in 1986 with deep vein thrombosis in both femoral veins and the inferior vena cava. The Claimant has been on [redacted] since then.

On September 18, 2012, the Claimant was evaluated in a consultative examination by a doctor of internal medicine. At the time, the Claimant was examined for deep vein thrombosis. The exam notes that the Claimant's use of [redacted] daily has controlled the problem. A review of Claimant's physical system was conducted. At the time of the

examination, the Claimant denied any chest pain, hypertension or myocardial infarction. He had mitral valve prolapse in the past. The patient noted pain in right shoulder and right knee with history of back pain. Straight leg raising was normal, squatting was done 200% without difficulty flexion of the right knee was painful with crepitus and Claimant could heel toe walk and tandem walk without difficulty.. The Medical Source Statement stated that the patient needs to continue taking C[redacted] and INR tests to monitor the effectiveness of [redacted] for an indefinite period of time. He should abstain from jobs that could expose him to a head injury or injury to his body because he is on [redacted]. The final impression was history of deep vein thrombosis due to proteins C deficiency and confirming that Claimant has to be on [redacted] for an indefinite period of time. Degenerative arthritis of the right knee. Varicose veins in both legs. No physical limitations were noted.

On September 18, 2012 a consultative Mental Status Examination by a psychologist was performed. At the time of the evaluation, the Claimant was not involved in any type of mental health counseling and had not been hospitalized for psychiatric reasons. At the time of the exam, the Claimant reported getting along well with people and enjoying fishing, hunting and watching hockey. The Claimant's interactions with the examiner were positive and were reported as friendly, responsive, reserved and cooperative. Responses were reality-based, motor activity normal and self-esteem fair. At the time the Claimant was actively looking for a job. At the time of this exam Claimant's appetite was normal, but noted he had difficulty eating following an incident at work when he was threatened by a manager. The diagnosis was adjustment disorder with mixed anxiety and depressed mood, the GAF score was 50. At that time the prognosis was guarded. The medical source statement was as follows: "based on today's examination it is felt that Claimant's ability to understand, retain and follow simple instructions, and perform basic routine intangible tasks is adequate. His ability to interact with others outside the home, supervisors, and the public appears to be adequate. Please refer to medical report for any physical limitations. This MSS statement is based on the disclosed observed conditions and impairments of the Claimant. This consultant is not a vocational expert in work and work impingement, if any, is based upon an average work scenario.

The Claimant completed the activities of daily living DHS 49G in April 2012. At that time it was noted that he was able to complete laundry, vacuuming, dishes, yard work and repairs.

Clinical records from Claimant's treating psychologist were provided from April 2012, covering several months of treatment. The notes indicate that Claimant was struggling with adjustment problems at work due to feeling unsafe, causing more anxiety and emotionally being unsettled. The Claimant also reported sleep problems due to being so nervous. Throughout this period, the Claimant continued to work on adjustment problems at work. The Claimant also participated in some group therapy sessions and appeared to respond well to his supportive experience. During this period, the Claimant reported due to significant sleep deprivation, he had called a relative and had threatened to shoot her. The psychologist did confirm with the relative that this did

occur. On May 2, 2012, the Claimant was in a manic state and was referred to a doctor for additional medication to treat the manic state he was in then. The Claimant canceled the appointment with the doctor because he did not want any other medications.

The Claimant was seen at the [redacted] health system in September 2011- status post significant history of venous thromboembolism. The report notes that over the past year the Claimant was absolutely stable without any new changes on examination. There were no new areas of swelling, no open sores or lesions. Venous testing done at the examination showed no new areas of thrombosis. Most of all of his venous segments showed minimal scar tissue at that time. He was to report for a one-year follow-up with a repeat DVT scan. The Claimant was prescribed prescription hose, a good program of vein health including intermittent leg elevation, and good exercise. The bilateral lower extremity venous study conducted at this time did confirm chronic deep vein thrombosis.

Here, Claimant has satisfied requirements as set forth in steps one and two. Claimant was working part time at the time of the hearing, but his earnings did not amount to SGA. His impairments have met the Step 2 severity requirements.

In addition, the Claimant's impairments have been examined in light of the listings and after a review of the evidence, the Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Listing 1.04 Disorders of the Spine, was examined in light of the Claimant's low back lumbar pain. Based upon the objective medical evidence, MRI reports and CT referenced above the Claimant does not meet the listing.

Listing 12.04 Affective Disorders was also considered and the Claimant, based upon the mental status examination, does not meet the listing. The examiner's findings that based on that days evaluation and examination, the Claimant's ability to understand, retain and follow simple instructions, and perform basic routine tangible tasks is adequate. The Claimant's ability to interact with others outside the home, supervisors and the public appears adequate. Also considered was the Claimant's minimal treatment. Therefore, vocational factors will be considered to determine Claimant's residual functional capacity to do relevant work.

Claimant has expressed a number of symptoms and limitations, as cited above, as a result of these conditions. Claimant testified to the following symptoms and abilities: the Claimant could walk about a half mile, could perform a squat although he said it hurt. The Claimant could shower and dress by himself. The Claimant testified that he could carry up to 30 pounds. The Claimant could stand 15 minutes and sit 20 minutes with a break. The Claimant indicated that nothing was wrong with his hands or arms, and noted that he had DVT in both legs. No limitations were imposed by the consultative examination.

As regards his mental impairments, the Claimant testified that his memory, concentration, social interaction were all good. He noted he often felt anxious and sometimes it kept him up at night.

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 working part time as a substitute teacher. Prior to that work the Claimant was a cost analyst performing cost accounting from 2000 to 2007. The Claimant was a cost analyst for both an auto company and prior to that a book company. During the hearing the Claimant was asked if he could still perform the duties of a cost analyst and cost accountant and testified that he could still perform such duties and that he sat most of the day. This testimony coupled with the consultative examination findings of no limitations would place the Claimant as capable of performing past relevant work as a cost analyst and cost accountant. Given this finding, it is determined that the Claimant is found not disabled at Step 4 with no further analysis required.

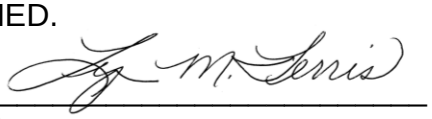
If a Step five analysis were to be performed it would be determined that the Claimant, based upon his age, [redacted], would be considered a younger individual with skilled work history which skills are deemed transferable, and a master's degree in finance, and as such would be capable of performing sedentary work based on the objective medical evidence and thus would be found not disabled at Step 5 as well.

> 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).

In light of the foregoing, it would also be 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 sedentary work as defined in 20 CFR 416.967(a). Based upon the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.22.

DECISION AND ORDER

Accordingly, the Department's decision is hereby AFFIRMED.



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

Date Signed: June 30, 2014

Date Mailed: June 30, 2014

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

LMF/tm

cc: [redacted]