

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-27298
Issue No(s): 2009
Case No.: [REDACTED]
Hearing Date: June 17, 2014
County: Genesee County DHS #2

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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, an in-person hearing was held on June 17, 2014 from Flint, Michigan. Participants on behalf of Claimant included [REDACTED] the Claimant, and [REDACTED], [REDACTED] Authorized Hearing Representative (AHR). 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 evidence. However, the AHR was not able to secure additional medical evidence. Accordingly, a determination will be made based upon the available evidence.

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. On December 6, 2013, Claimant applied for Medicaid (MA-P) and retroactive MA-P.
2. On December 16, 2013, the Medical Review Team (MRT) found Claimant not disabled for MA-P and the State Disability Assistance (SDA) program.
3. On January 25, 2014, the MRT found Claimant not disabled for MA-P, but did find Claimant disabled for the SDA program.
4. On January 30, 2014, the Department notified Claimant of the MRT determination.

5. On February 7, 2014, the Department received Claimant's timely written request for hearing.
6. On April 28, 2014, the State Hearing Review Team (SHRT) found Claimant not disabled.
7. Claimant alleged physical disabling impairments of injuries from a November 2013 accident, including fractures legs, nerve damage in legs, left clavicle and shoulder fractures, back fractures, rib fractures, head fracture and traumatic brain injury.
8. Claimant alleged mental disabling impairments due to depression.
9. At the time of hearing, Claimant was 34 years old with a [REDACTED], birth date; was 6'2" in height; and weighed 170 pounds.
10. Claimant has a high school education and has a work history of landscaping, construction, fireman/medical first responder, and assistant chef.
11. 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 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.

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 person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (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.

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claiming a physical or mental

disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

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

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 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:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting.

Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a Claimant's age, education, or work experience, the impairment would not affect the Claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Claimant alleges disability due to injuries from a November 2013 accident, including fractures legs, nerve damage in legs, left clavicle and shoulder fractures, back fractures, rib fractures, head fracture and traumatic brain injury as well as depression.

On April 14, 2014, Claimant attended a consultative psychological evaluation. Diagnoses were rule out mild neurocognitive disorder, alcohol use disorder moderate, adjustment disorder with mixed anxiety and depressed mood, unspecified mental

disorder related to mood/anger and per Claimant traumatic brain injury. The examiner stated Claimant's mental abilities to understand, attend to, remember, and carry out instructions of work-related behaviors are not overtly impaired. Claimant's abilities to respond appropriately to co-workers and supervision and to adapt to change and stress in the workplace are mildly impaired.

On December 9, 2013, Claimant's physician wrote a letter to the county probate court stating the Claimant's condition warranted the appointment of a temporary conservator and guardian. The letter documented that on November 27, 2013, Claimant was admitted to the hospital with a diagnosis of traumatic brain injury resulting in cognitive impairments. The letter also noted Claimant would be unable to attend a court hearing due to his presence on the unit.

On December 10, 2013, the trauma/surgery doctor completed a DHS-49 Medical Examination Report documenting diagnoses of subarachnoid hemorrhage, cerebral contusion, bilateral pulmonary contusion, left scapula fracture, rib fractures, bilateral tibia fractures, and traumatic brain injury. It was noted that Claimant was currently on bed rest and was agitated and confused after brain injury. Limitations included lifting less than 10 pounds, standing or walking less than 2 hours in an 8 hour work day, unable to use feet/legs to operate foot/leg controls and only able to use right hand/arm for reaching, pushing/pulling and fine manipulating. The doctor indicated an assistive device was medically required and needed for ambulation. Mental limitations with comprehension, sustained concentration, following simple directions and social interaction were marked.

Claimant was admitted to the hospital on November 27, 2013 for injuries from a pedestrian versus motor vehicle accident. Problems at admission included subarachnoid hemorrhage, frontal lobe contusion, bilateral pulmonary contusion, left scapula fracture, fracture of left clavicle, rib fractures, lumbar transverse process fracture L2L3, fracture of left tibia and fibula open, closed fracture of right tibia and fibula, traumatic brain injury, and left occipital condyle fracture. Claimant underwent multiple surgeries for his legs.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Claimant has presented medical evidence establishing that he does have some limitations on the ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms diagnosis and treatment of subarachnoid hemorrhage, frontal lobe contusion, bilateral pulmonary contusion, left scapula fracture, fracture of left clavicle, rib fractures, lumbar transverse process fracture L2 L3, fracture of left tibia and fibula open, closed fracture of right tibia

and fibula, traumatic brain injury, left occipital condyle fracture, traumatic brain injury and adjustment disorder with mixed anxiety and depressed mood.

Based on the objective medical evidence, considered listings included: 1.00 Musculoskeletal System, 11.00 Neurological, and 12.00 Mental Disorders. However, records from the treating orthopedist were not able to be obtained. Accordingly, the objective medical evidence was not sufficient to meet the intent and severity requirements of any musculoskeletal system listing. The medical evidence was also not sufficient to meet the intent and severity requirements of any other listing, or its equivalent. Accordingly, the Claimant cannot be found disabled, or not disabled, at Step 3; therefore, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

Before considering the fourth step in the sequential analysis, a determination of the individual's residual functional capacity ("RFC") is made. 20 CFR 416.945. An individual's RFC is the most he/she can still do on a sustained basis despite the limitations from the impairment(s). *Id.* The total limiting effects of all the impairments, to include those that are not severe, are considered. 20 CFR 416.945(e).

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered 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 to function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The evidence confirms diagnosis and treatment of subarachnoid hemorrhage, frontal lobe contusion, bilateral pulmonary contusion, left scapula fracture, fracture of left clavicle, rib fractures, lumbar transverse process fracture L2 L3, fracture of left tibia and fibula open, closed fracture of right tibia and fibula, traumatic brain injury, left occipital condyle fracture, traumatic brain injury and adjustment disorder with mixed anxiety and depressed mood. Claimant's testimony indicated he can walk 5 minutes with crutches, stand 5 minutes with support, sit 10 minutes, and was advised not to lift. While no ongoing treatment records were submitted, Claimant provided detailed testimony of the complications he is experiencing and treatments he has been through. In part, Claimant described nerve damage in both legs, left leg wound still open after a skin graft failed, sterile dressing changes still being done four times per day, and ongoing daily use of an exogen ultrasound bone heal system. Claimant's testimony is found mostly credible regarding his physical limitations and ongoing treatment. After review of the entire record it is found, at this point, that Claimant does not maintain the residual functional capacity to perform even sedentary work as defined by 20 CFR 416.967(a).

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3).

Claimant's has a work history of landscaping, construction, fireman/medical first responder, and assistant chef. In light of the entire record and Claimant's RFC (see above), it is found that Claimant is not able to perform his past relevant work.

Accordingly, the Claimant cannot be found disabled, or not disabled, at Step 4; therefore, the Claimant's eligibility is considered under Step 5. 20 CFR 416.905(a).

In Step 5, an assessment of Claimant's residual functional capacity 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). At the time of hearing, Claimant was 34 years old and, thus, considered to be a younger individual for MA-P purposes. Claimant a high school education and has a work history of landscaping, construction, fireman/medical first responder, and assistant chef. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

The evidence confirms diagnosis and treatment of subarachnoid hemorrhage, frontal lobe contusion, bilateral pulmonary contusion, left scapula fracture, fracture of left clavicle, rib fractures, lumbar transverse process fracture L2 L3, fracture of left tibia and fibula open, closed fracture of right tibia and fibula, traumatic brain injury, left occipital condyle fracture, traumatic brain injury and adjustment disorder with mixed anxiety and depressed mood. As noted above, Claimant does not maintain the residual functional capacity to perform sedentary work as defined by 20 CFR 416.967(a).

After review of the entire record, and in consideration of the Claimant's age, education, work experience, and RFC, Claimant is found disabled at Step 5.

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.

DECISION AND ORDER

Accordingly, the Department's determination 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. Initiate a review of the application dated December 6, 2013, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform

Claimant of the determination in writing. A review of this case shall be set for September 2015.

2. Issue the Claimant any supplement he may thereafter be due.



Colleen Lack
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: August 11, 2014

Date Mailed: August 11, 2014

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides or has its principal place of business in the State, 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

201427298/CL

CL/hj

cc:

