

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

IN THE MATTER OF:



Reg. No.: 14-011439-RECON
REHD/RECON
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: November 6, 2014
County: Ingham

SUPERVISING ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

DECISION AND ORDER OF RECONSIDERATION

This matter is before the undersigned Supervising Administrative Law Judge (ALJ) pursuant to the Claimant's Authorized Hearing Representative's (AHR) timely Request for Rehearing/Reconsideration of the Hearing Decision generated by the assigned Administrative Law Judge (ALJ) at the conclusion of the hearing conducted on November 6, 2014, and mailed on January 7, 2015, in the above-captioned matter.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 792.11015 and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program or programs that is the basis for the claimant's benefits application, and **may** be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

This matter having been reviewed, an Order Granting Reconsideration was mailed on January 23, 2015.

ISSUE

Did the ALJ err when she affirmed the Department of Human Services (Department's) decision to deny Claimant's application for disability Medical Assistance (MA-P)?

FINDINGS OF FACT

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

1. The Findings of Fact Numbers 1 through 10 under Registration Number 14-011439 are incorporated by reference.
2. On November 6, 2014, a hearing was held resulting in a Hearing Decision mailed on January 7, 2015, which found that Claimant was not disabled.
3. On January 12, 2015, the Michigan Administrative Hearing System (MAHS) received the Claimant's Request for Rehearing/Reconsideration.
4. On January 23, 2015, the MAHS issued an Order Granting Reconsideration.

CONCLUSIONS OF LAW

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

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.

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 413.913. 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 (e.g., 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 to 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 3 to Step 4. 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 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 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).

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).

As indicated above, Step 1 considers Claimant's current work activity. In the record presented, Claimant last worked in 2007, and was not involved in substantial gainful activity during the relevant time period. Therefore, Claimant cannot be disqualified from receiving disability benefits under Step 1. However, the evaluation continue to Step 2.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual 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 916.920(a)(4)(ii); 20 CFR 916.920(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 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(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 the following: traumatic brain injury, epilepsy, seizures, convulsions, memory loss, dizziness, stutter, suicidal ideation, confusion, cognitive disorder, depression, anxiety, poor balance, dizziness, nausea, fatigue and stress.

Physical impairments

To support of his disability claim, Claimant submitted medical records from his neurologist dated September, 2013. These records showed that Claimant complained of a seizure with tongue bite and urinary incontinence. The neurologist indicated Claimant

was in medical compliance and his seizures had been well-controlled. The neurologist noted Claimant reported having seizures following a motor vehicle accident that occurred in 1996. It was suspected that he may have sustained an intracranial injury. The neurologist opined Claimant was experiencing partial seizures from Claimant's report of occasional loss of awareness, confusion and forgetting what day it was and where he had to go. The neurological exam showed Claimant had overall short term memory loss. The neurologist assessed Claimant with nocturnal generalized tonic-clonic seizures, with a history of daytime loss of awareness and staring, disorientation lasting the entire day possibly posttraumatic from the 1996 car accident and head injury.

On [REDACTED], Claimant was admitted to the hospital for uncontrolled seizures, suicidal ideation and attempt. The admitting physician noted Claimant had a history of epilepsy, previously controlled on Lamictal and Keppra, who had recently lost his job and his health insurance. Without medication he had multiple seizures over the last couple of months. Keppra was originally started then discontinued due to worsening mood and side effects. The CT of the head without contrast showed no evidence of acute major vessel infarct, intracranial hemorrhage, or mass. The EEG showed mild cerebellar atrophy which can be seen with Dilantin therapy. MRI did not show anything significant. He was discharged on March 7, 2014, with a diagnosis of epilepsy with breakthrough seizures due to noncompliance and no current medications; major depressive disorder; anxiety disorder and cognitive disorder.

On [REDACTED], Claimant saw a neurologist for an initial evaluation of his seizures. Claimant was in a car accident in 1996 and experienced head trauma. His seizures are described as general tonic-clonic seizures. His last general tonic-clonic seizure was in July, 2014. He was having approximately one general tonic-clonic seizure a year. When he was off his medications in early 2014, he had several spells. He also had a significant history of depression with suicidality in early 2014. An EEG in September, 2013, was normal. The neurologist opined that Claimant's prolonged aura lasting days is suspicious for continued partial seizure activity.

The MRI brain without and with contrast on [REDACTED] revealed the appearance of increased signal in the left greater than right paramedian midbrain on pre- and postcontrast T1 Bravo images; however, this was not replicated on routine T1 pre- and postcontrast images or other sequences. This was favored to represent an unusual artifact, though underlying mineralization or deposition disease was difficult to exclude based on the images provided. No corresponding abnormality was identified through gradient echo images.

Mental impairments

Medical evidence from Claimant's therapist was also submitted. (20 CFR 416.913(d)(1). Claimant was referred to Community Mental Health by his primary care provider. During Claimant's intake processing on March 24, 2014, the therapist noted Claimant was diagnosed with epilepsy in 1999-2000. Claimant continued to work until 2007. His

lost his disability insurance in December, 2013. He attempted suicide in February, 2014. He was admitted to the hospital for the suicide attempt. He complained that he was "scared to sleep." It was reported that Claimant struggled to maintain his composure during the intake interview and reported experiencing suicidal ideation. The therapist indicated Claimant appeared to stutter and shake which was a side effect of his epilepsy.

On [REDACTED], during his counseling session, Claimant reported difficulty sleeping, poor concentration, feeling guilty, loss of interest and suicidal ideation. Claimant was reportedly emotional and was crying, and appeared to have difficulty maintaining his composure. Diagnosis: Axis I: Major depressive order; Axis II: Unspecified adjustment reaction; Axis III: Epilepsy; Axis IV: Severe; problems related to finances, occupation, social environment; Axis V: GAF=41.

On [REDACTED], Claimant was cooperative during his bi-monthly counseling session. He appeared anxious. His reasoning, impulse control, judgment and insight were noted to be poor. Assessment: Diagnosis: Axis I: Major depressive order; Axis II: Unspecified adjustment reaction; Axis III: Epilepsy; Axis IV: Severe; problems related to finances, occupation, social environment; Axis V: GAF=46.

On [REDACTED], Claimant met with his therapist. He appeared content. His mood was depressed. His reasoning, impulse control, judgment and insight were noted to be poor. Assessment: Diagnosis: Axis I: Major depressive order; Axis II: Unspecified adjustment reaction; Axis III: Epilepsy; Axis IV: Severe; problems related to finances, occupation, social environment; Axis V: GAF=47.

On [REDACTED], Claimant appeared emotional during his therapy session. His reasoning, impulse control, judgment and insight were noted to be poor. Assessment: Diagnosis: Axis I: Major depressive order; Axis II: Unspecified adjustment reaction; Axis III: Epilepsy; Axis IV: Severe; problems related to finances, occupation, social environment; Axis V: GAF=52.

During the hearing, Claimant testified that he lived in a house with his aunt. Claimant's aunt provides his support. Claimant stated that he is single with no children under 18 and no income. Claimant receives food assistance program benefits and healthy Michigan medical program benefits. Claimant testified that he watches television for approximately 5 hours per day. Claimant stated that did not have a driver's license and relied on his family for transportation. Claimant testified that he was unable to prepare his own meals, but then stated that he was able to heat foods in the microwave. Claimant reported that he goes grocery shopping at least once per month, but that he needs help creating a shopping list. Claimant stated that clean the floors and his room. Claimant also will also rake leaves but that he cannot use power tools. Claimant testified that he assisted a family member (his uncle) with youth basketball. Claimant said that he can do the following: stand for 15 minutes, sit for an hour, walk 400 yards or meters, shower, dress, tie shoes. Claimant cannot perform a squat and he cannot

touch his toes. Claimant stated that he has no problems with his back or knees. The heaviest weight he can carry is a gallon of milk.

Claimant also stated with his seizures, side effects, memory problems, concentration, and shakiness, he is unable to work. Claimant stated his therapist noted he had severe anxiety and depression, which caused irritability, and affected his concentration. Claimant testified that every few weeks or so his body needed to shut down, where he would get exhausted and have to stay home in bed for a day and a half or two days. His last grand mal seizure was in the summer. The other seizures he had been told were blank stares that he experienced weekly. He stated that he did not always know when he had a seizure. He explained that if someone was with him, they would nudge him asking if he was okay and still with them.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). Based on the medical evidence, Claimant has presented evidence establishing that he does have some physical and mental limitations on his ability to perform basic work activities. The medical evidence has established that 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, Claimant is not disqualified from receipt of MA-P benefits under Step 2 and the ALJ erred in finding otherwise.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms treatment/diagnoses of traumatic brain injury, epilepsy, seizures, convulsions, memory loss, dizziness, stutter, suicidal ideation, confusion, cognitive disorder, depression, anxiety, poor balance, dizziness, nausea, fatigue and stress.

Listing 11.00 (neurological) and Listing 12.00 (mental disorders) were considered in light of the objective evidence. Based on the foregoing, it is found that Claimant's impairment(s) do not meet the intent and severity requirement of a listed impairment; therefore, Claimant cannot be found disabled at Step 3. Accordingly, Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the individual'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 are not considered. 20 CFR 416.960(b)(3). RFC 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. RFC is the most that can be done, despite the limitations.

This step examines the physical and mental demands of the work done by Claimant in the past. 20 CFR 416.920(f). Claimant's past work history is that of an inventory specialist and as such, Claimant would be unable to perform the duties associated with his past work due to his memory and concentration issues. Likewise, Claimant's past work skills will not transfer to other occupations. Claimant cannot be found able to return to past relevant work and the ALJ erred in finding otherwise. Accordingly, Step 5 of the sequential analysis is required.

In Step 5, an assessment of the individual'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 had a two-year college degree, was 39 years-old and was, thus, considered to be a younger individual for MA-P purposes. 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 undersigned finds that the record shows that Claimant is capable of performing sedentary work even with his impairments. However, when the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969. Under the Medical-Vocational guidelines, a younger individual (age 39), with a post-high school education (associate's degree) and an unskilled work history that is not transferrable who is capable of sedentary work is not considered disabled pursuant to Vocational Rule 201.28.

Overall, the undersigned is not convinced that Claimant has satisfied the burden of proof to show by competent, material and substantial evidence that he has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although Claimant has cited medical problems, the objective clinical documentation submitted by Claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate Claimant's assertion that his alleged impairments are

severe enough to reach the criteria and definition of disability. Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

In this matter, the assigned ALJ erred when she determined that Claimant was not disabled at Step 2 of the sequential analysis. However, the assigned ALJ correctly found that Claimant was not disabled at Step 5. The record does not show that the assigned ALJ completely disregarded evidence that would tend to show that Claimant was disabled when she made her decision. Nor is there evidence that the assigned ALJ mischaracterized Claimant's testimony or ignored testimony offered by Claimant's uncle during the hearing. The assigned ALJ demonstrated that all of the evidence and testimony was considered when the decision was rendered that found Claimant not disabled.


As a result, the ALJ's determination which found Claimant was not disabled at Step 5 is affirmed for the reasons stated above.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, it is determined that the Administrative Law Judge erred when she found Claimant was not disabled at Step 2; however, the ALJ did not err when she found Claimant was disabled at Step 5.

The Supervising Administrative Law Judge, based on the above findings of fact and conclusions of law, AFFIRMS the Department's determination that Claimant's May 2, 2014 application for MA-P, and retroactive application, should be denied as he is not disabled.

IT IS SO ORDERED.



C. Adam Purnell
Supervising Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: 05/28/2015

Date Mailed: 05/28/2015

NOTICE: The law provides that within 30 days of receipt of the this Decision, the Claimant may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

CAP/sw

cc:

