

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS & RULES
FOR THE DEPARTMENT OF HUMAN SERVICES**

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IN THE MATTER OF:

SOAHR Docket No. 2006-4025REHD

DHS Reg No: 2006-13761

Case No: [REDACTED]

[REDACTED],

Claimant

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RECONSIDERATION DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; MCL 400.37; and MAC R 400.919 upon an Order of Reconsideration granted on October 3, 2006.

ISSUE

Did Claimant meet the disability standard for Medical Assistance based on disability (MA-P) for the period of December 2004 through August 2005?

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 or about August 9, 2006, Administrative Law Judge (ALJ) Jay W. Sexton issued a Decision & Order in which the Administrative Law Judge upheld the Department's denial of MA-P benefits.
- (2) On September 8, 2006, the State Office of Administrative Hearings and Rules (SOAHR) for Department of Human Services (DHS) received Claimant's request for Rehearing/Reconsideration, protesting the denial of MA-P benefits for the period of December 2004 through August 2005.
- (3) On October 3, 2006, SOAHR for DHS granted the Claimant's request for reconsideration and issued a Notice of Reconsideration to the Claimant.
- (4) On March 17, 2005, Claimant applied for MA-P benefits retro to December 2004.

- (5) Claimant was hospitalized during the period of December 25 to December 28, 2004, with discharge diagnoses of atypical chest pain, cellulites of the left lower extremity, chronic obstructive pulmonary disease (COPD) with acute bronchitis, and chronic smoking. (Exhibit 1, p. 20)
- (6) On January 9, 2005, Claimant was admitted to the Emergency Room, with a chief complaint of chest pain for two weeks; the attending physicians decided to go ahead and do a CT scan of Claimant's chest due to their concern for his continued chest pain with respiratory difficulties; the CT scan revealed significant upper lobe emphysema, moderate nodular changes, hilar adenopathy, and several granulomas and nodes; given Claimant's multitude of problems and persistent respiratory symptomatology, Claimant was admitted to the hospital; and the clinical impression was acute severe chest pain and moderate respiratory distress with abnormal CT scan and nodules. (Exhibit 1, p. 22)
- (7) On January 9, 2005, it was noted on the Physical Examination report that Claimant is a heavy smoker, and he has a history of emphysema and alcoholism: "He drinks at least two drinks or four beers every day." (Exhibit 1, p. 23)
- (8) After being admitted to the hospital on January 9, 2005, and after undergoing a complete physical examination and laboratory tests, he was diagnosed with an exacerbation of COPD, multiple lung nodules, severe emphysema, alcoholism, cellulitis of the legs, and chest pain; and Claimant was started on oxygen and steroids. (Exhibit 1, p. 24)
- (9) Claimant was hospitalized from February 24, 2005, to March 2, 2005, and diagnosed with palpitations, COPD, congestive heart failure, new onset atrial fibrillation with rapid ventricular response, ETOH use, oxygen dependency secondary to COPD, and tobacco abuse. (Exhibit 1, pp. 53-55)
- (10) Claimant was hospitalized from March 17, 2005 to March 21, 2005, and diagnosed with chronic atrial fibrillation, oxygen-dependent chronic lung disease, and congestive heart failure secondary to atrial fibrillation. (Exhibit 1, p. 62)
- (11) Claimant's chest x-ray done April 6, 2005, revealed chronic lung disease with possible superimposed mild fluid overload or left heart failure. (Exhibit 1, p. 76)
- (12) On April 7, 2005, the Medical Review Team (MRT) determined that Claimant did not qualify for MA-P benefits. (Exhibit 1, p. 10)
- (13) On April 13, 2005, the Department sent written notice of the denial of MA-P benefits to Claimant. (Exhibit 1, p. 5)

- (14) Claimant was hospitalized from May 9, 2005 to May 12, 2005, due to atrial fibrillation, congestive heart failure, left ventricular systolic dysfunction alcohol abuse, and COPD with continued tobacco abuse and the use of home oxygen. (Exhibit 1, p. 77)
- (15) During his hospitalization beginning May 9, 2005, claimant was counseled on the importance of smoking and alcohol cessation, as well as provided with extensive heart failure education; and it was noted that Appellant reported cutting back his alcohol use, and his main issue is that his financial resources were very limited, and he had no income to purchase prescription medications. (Exhibit 1, pp. 77 & 78)
- (16) On May 13, 2005, Claimant was hospitalized due to a new onset of atrial fibrillation with an acute exacerbation of COPD. (Exhibit 1, p. 83)
- (17) On May 16, 2005, Claimant was hospitalized due to COPD exacerbation. (Exhibit 1, p. 84)
- (18) Claimant was hospitalized from May 19, 2005 to May 22, 2005, due to Atrial fibrillation with rapid ventricular rate, congestive heart failure exacerbation, probable early cardiomyopathy; and he was diagnosed with COPD-oxygen dependent, alcohol and tobacco abuse, bilateral lower extremity discomfort, leukocytosis, anemia, hyperglycemia, and obesity. (Exhibit 1, pp. 90-96)
- (19) The Department received Claimant's timely hearing request, protesting the denial of MA-P benefits retro to December 2004.
- (20) On May 23, 2005, the State Hearing Review Team (SHRT) upheld the denial of MA-P benefits on the basis that there was insufficient medical information, and additional medical documentation and consultative examinations were recommended.
- (21) Claimant was hospitalized from May 26, 2005 to June 1, 2005, due to acute gastrointestinal bleeding, atrial fibrillation, congestive heart failure, hypotension, cardiomyopathy, and COPD. (Exhibit 1, pp. 100-102)
- (22) During Claimant's hospitalization beginning May 26, 2005, Claimant was seen by the hospital's pulmonary critical care staff and advanced cardiac health care. (Exhibit 1, p. 103)
- (23) On June 2, 2005, Claimant was admitted into the Emergency Room and diagnosed with an episode of atrial fibrillation with rapid ventricular response, resolved upon discharge. (Exhibit 1, p. 121)

- (24) On June 3, 2005, Claimant was admitted into the Emergency Room and diagnosed with chest wall pain, atypical chest pain, and COPD secondary to tobacco abuse. (Exhibit 1, pp. 123 & 124)
- (25) On June 4, 2005, Claimant was admitted into the Emergency Room and diagnosed with atrial fibrillation with rapid ventricular response, diabetes mellitus, and emphysema. (Exhibit 1, pp. 127 & 128)
- (26) Claimant's pulmonary function test done on June 7, 2005, revealed a mild restrictive ventilatory impairment based on the reduce lung volumes; air flow obstruction; a low FVC; and severe reduction of the diffusing capacity. (Exhibit 1, p. 140)
- (27) On June 21, 2005, Claimant was admitted into the Emergency Room and underwent a chest x-ray which revealed diffuse interstitial fibrosis with fibroemphysematous changes involving the biapical regions. (Exhibit 1, p. 143)
- (28) On December 27, 2005, Claimant reapplied for MA-P retro to September 2005.
- (29) On April 5, 2006, the MRT completed a Medical-Social Eligibility Certification, certifying that Claimant met the MA-P disability criteria retro to September 2005, on the basis that he met Listing 3.02(C) found at 20 CFR, Part 404, Subpart P, Appendix 1. (Exhibit 1, pp. 144 & 145)
- (30) On July 6, 2006, SHRT upheld the denial of MA-P benefits for the retro period of December 2004 through February 2005.
- (31) Claimant was a 48 year old individual with a 9th grade education and at least unskilled work experience when he first applied for MA-P benefits in March 2005.
- (32) Claimant was not engaged in substantial gainful activity at any time relevant to this matter.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Family Independence Agency (FIA or agency) administers the MA program pursuant to MCL 400.10, et seq., and MCL 4000.105; MSA 16.490 (15). Agency policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM), and the Program Reference Manual (PRM).

Claimant's representative filed a request for reconsideration/rehearing, protesting the denial of MA-P for the period of December 2004 through August 2005. Claimant's March 17, 2005, MA-P and retro MA-P application was denied by the Department. Claimant's reapplied for MA-P and retro MA-P benefits on December 27, 2005. On April 5, 2006, the MRT completed a Medical-Social Eligibility Certification, certifying that Claimant met the MA-P disability criteria retro to September 2005, on the basis that he met Listing 3.02(C) found at 20 CFR, Part 404, Subpart P, Appendix 1. The MRT reviews medical evidence, for disability or blindness, and certifies the client's medical eligibility for assistance. After MRT determined that Claimant met the MA-P disability standard, SHRT noted that Claimant had been approved for MA-P at the MRT level, however, he failed to establish that he met the MA-P disability standard for the period of December 2004 through February 2005. (See SHRT decision dated July 6, 2006). The only issue before this ALJ is whether Claimant met the disability standard for the period of December 2004 through August 2005.

Pursuant to Federal Rule 42 CFR 435.50, the Family Independence Agency uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. 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

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 a recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being 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 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

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 is 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.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920 (c).

If the impairment or combination of impairments does not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment...20 CFR 416.929 (a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms)...20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b) (1) (iv).

Basic work activities are the abilities and aptitude necessary to do most jobs. Examples of these include –

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, 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.
20CFR 416.921 (b).

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

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

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967 (a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls...20 CCR 416.9677 (b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

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

All of the evidence relevant to the claim, including medical opinions, are reviewed and findings are made. 20 CFR 416.927 (c).

A statement by a medical source finding that an individual is “disabled” or “unable to work” does not mean that disability exists for the purposes of the program. 20 CFR 416.927 (e).

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability... 20 CFR 416.994 (b)(4)(iv).

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).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920 (b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920 (c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290 (d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920 (e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, §§ 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920 (f).

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The ALJ correctly found that the Claimant was not disqualified from receiving disability at Step 1, because he was not substantially gainfully employed at any time relevant to this matter. Therefore, the analysis continues to Step 2. (See p.9 of the ALJ's August 9, 2006, Decision and Order.)

The ALJ correctly found that the Claimant was not disqualified from receiving disability at Step 2, because he established a severe impairment which met the MA-P duration standard. Therefore, the analysis continues to Step 3. (See p.9 of the ALJ's August 9, 2006, Decision and Order.)

Claimant's representative argued in her request for reconsideration/rehearing that the previous ALJ failed to determine whether Claimant met Listing 3.02(C) 1 found at 20 CFR, Part 404, Subpart P, Appendix 1: Chronic impairment of gas exchange due to clinically documented pulmonary disease with single breath DLCO less than 10.5 ml/min/mm Hg or less than 40 percent of the predicted normal value. In this case, Claimant failed to provide any objective medical evidence to establish that his severe impairment met or equaled any listing for the period of December 2004 through August 2005. Therefore, the analysis continues.

The ALJ found that the Claimant was able to do light work and his past relevant work as a short order cook. (See pp. 9 & 10 of the ALJ's August 9, 2006, Decision and Order.) As stated above light work requires the ability to lift no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds; and a significant amount of walking or standing, or sitting most of the time with some pushing and pulling of arm or leg controls. [20 CFR 416.967(b)].

Claimant has a complex medical history. During the time period in question, beginning December 2004, Claimant was hospitalized numerous times for atrial fibrillation with rapid ventricular response leading to exacerbations of congestive heart failure, a worsening of shortness of breath, chest pain, and acute gastrointestinal bleeding. In addition, claimant medical problems included bilateral lower extremity pain with edema, diabetes, obesity, and abdominal pain. Further Claimant was oxygen-dependent due to his severe COPD. In May 2005, Claimant spent the majority of his time hospitalized and in need of medical treatment for his severe physical impairment. While hospitalized, Claimant received pulmonary critical care and advanced cardiac health care. Claimant provided objective medical evidence to establish that he had a combination of medical problems which not only met the severity and duration standard for MA-P purposes, but compromised his ability to do light work and his past relevant work. Therefore, Claimant should not have been disqualified from receiving disability at Step 4.

The previous ALJ found that the Claimant would be disqualified from receiving disability at Step 5 on the basis Claimant's addiction to cigarettes and alcohol are a material factor to his disabilities. (See p. 10 of the ALJ's August 9, 2006, Decision and Order.) The ALJ made reference to page 77 of Exhibit C1 of the medical packet which states in

pertinent part that Claimant “was extensively counseled on the importance of smoking and alcohol cessation, as well as provided with extensive heart failure education.”

In this case, Claimant reported that he cut down on his alcohol use and quit smoking some time in May 2005. (Exhibit 1, pp. 77, 78, & 100) Although smoking and alcoholism are known for increasing the risk for severe medical problems, the objective medical evidence on the record fails to establish that Claimant’s remaining physical limitations would not have been disabling during the time period in question if he had stopped smoking and using alcohol. 20 CFR 416.935(b)(2)(i) requires that this determination be made before concluding that a client’s drug addiction or alcoholism is a contributing factor material to the determination of disability.

The rules set forth at 20 CFR 404, Subpart P, App. 2, are not applied if one of the findings of fact about the claimant's vocational factors and residual functional capacity is not the same as the corresponding criterion of a rule. In those cases, full consideration is given to all relevant facts in accordance with the definitions and discussions concerning vocational consideration. 20 CFR 416.969(a). Claimant is an individual with a limited educational background, and he was considered a younger individual at 48 years old. 20 CFR 416.963 and 20 CFR 416.964 Claimant’s combination of severe medical problems along with his limited educational background and unskilled work experience significantly affected his ability to do most sedentary jobs at the time relevant to this matter. Accordingly, this ALJ finds that the vocational guidelines were not applicable to this case, and Claimant met the MA-P disability standard for the period of December 2004 through August 2005.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides Claimant met the MA-P disability standard for the period of December 2004 through August 2005.

Accordingly, the department's MA-P eligibility determination is REVERSED. It is further ORDERED that the department shall determine if Claimant was otherwise eligible for MA-P benefits for the period of December 2004 through August 2005.

/s/

Marya A. Nelson-Davis
Administrative Law Judge
State Office of Administrative Hearing and Rules

Date Mailed June 15, 2009

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