

**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. 2009-25744 REHD
DHS Reg. No: 2009-21238

██████████

Claimant

_____ /

RECONSIDERATION DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 24.287(1) and 1993 AACS R 400.919 upon the request of the Claimant.

ISSUE

Did the Administrative Law Judge err when he determined the Claimant was not disabled and ineligible for Medical Assistance (MA-P), and retro Medical Assistance (retro MA-P) ?

FINDINGS OF FACTS

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

1. On April 6, 2009, Administrative Law Judge (ALJ) William A. Sundquist issued a Hearing Decision in which the ALJ affirmed the Department of Human Services' (DHS or Department) denial of the Claimant's July 31, 2008, application for MA-P, and retro MA-P.
2. On May 5, 2009, the State Office of Administrative Hearings and Rules (SOAHR) for the Department of Human Services received a request for Rehearing/Reconsideration submitted by the Claimant's representative ██████████.
3. On July 13, 2009, SOAHR granted the Claimant's request for reconsideration and issued an Order for Reconsideration. The record was reopened until August 14, 2009, in order to give the Claimant the opportunity submit new medical information which the ALJ failed to consider.

Order of Reconsideration
SOAHR Docket No. 2009-25744
DHS Reg. No. 2009-21238
Reconsideration Decision

4. On August 20, 2009, SOAHR issued a Notice of Reconsideration Extension of Time to Submit Further Documentation which extended the record until September 25, 2009.
5. As of November 16, 2009, neither the Claimant, nor the Claimant's representative has submitted new medical information.
6. Findings of Fact 1 -10 from the Hearing Decision, mailed on April 7, 2009, are hereby incorporated by reference.

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).

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.

Order of Reconsideration
SOAHR Docket No. 2009-25744
DHS Reg. No. 2009-21238
Reconsideration Decision

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. 20 CFR 416.921(b).

Order of Reconsideration
SOAHR Docket No. 2009-25744
DHS Reg. No. 2009-21238
Reconsideration Decision

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.

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 reflect 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, is 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:

Order of Reconsideration
SOAHR Docket No. 2009-25744
DHS Reg. No. 2009-21238
Reconsideration Decision

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 416.920(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).

The ALJ correctly found the Claimant not ineligible for disability at Step 1 because the Claimant has not been engaged in substantial gainful activity since August 2005. Department exhibit pp 8 & 11. Therefore, the Claimant is not disqualified from receiving disability at Step 1. The ALJ properly considered the Claimant's eligibility at Step 2.

On [REDACTED], the Claimant was examined by [REDACTED]. [REDACTED] diagnosed the Claimant condition as right Otis media, sinusitis, GERD, depression and Hypertension. The Claimant was told to cease smoking and to drink fluids. The Claimant medications were reviewed and refilled.

On April 28, 2008, the Claimant underwent angioplasty and stent placement to his distal circumflex due to triple vessel coronary disease.

On [REDACTED], the Claimant's treating cardiologist, completed a discharge summary. [REDACTED] indicated in his report that the Claimant's discharge diagnosis was ST segment elevation inferoapical myocardial infarction, tobacco abuse, depression and dyslipidemia.

Order of Reconsideration
SOAHR Docket No. 2009-25744
DHS Reg. No. 2009-21238
Reconsideration Decision

On [REDACTED] examined the Claimant. [REDACTED] indicated in his [REDACTED], progress notes that the Claimant's blood pressure was unacceptably elevated and recommended treatment through medication. [REDACTED] indicated that the circumflex coronary artery showed 60% obstruction and 99% obstruction in the second obtuse marginal branch. This blockage was successfully treated during the April 2008, angioplasty but no stent was placed. [REDACTED] indicated that the Claimant's blockage was in a vessel which made stenting extremely hazardous. [REDACTED] recommended monitoring and treatment with medication until stenting was the only option. The Claimant, despite [REDACTED] orders, continued to smoke tobacco. Department exhibit pp -23- 25.

On [REDACTED] examined the Claimant. [REDACTED] indicated in his progress notes that the Claimant was a "...thin gentleman appearing his stated age in no acute distress, but smelling heavily of tobacco smoke." The Claimant's blood pressure was still elevated. [REDACTED] indicated that the Claimant had no chest pains, palpitations, presyncope or syncope or musculoskeletal, coetaneous, or neurological complaints since his last visit in [REDACTED].

On [REDACTED], completed a DHS-49 Medicaid Examination Report. [REDACTED] indicated in his report that he first examined the Claimant on [REDACTED], after the Claimant had been admitted to the hospital due to left shoulder pain and discomfort and abnormal EKG. A subsequent heart catheterization found blockage in the left anterior descending coronary artery and in the circumflex obtuse marginal branch. [REDACTED] indicated that he last examined the Claimant on [REDACTED]. [REDACTED] indicated on page two of the report that the Claimant had no post-operative physical limitations. Department exhibit pp 20- 21.

On [REDACTED] completed a [REDACTED] with [REDACTED] form. [REDACTED] indicated that the Claimant had a Class I functional capacity or cardiac disease without physical limitations. [REDACTED] also indicated that the Claimant's therapeutic classification was Class B or cardiac disease which did not require a restriction of physical activity but should be advised against severe or competitive physical efforts. Department Exhibit p 22.

On [REDACTED], the Claimant presented at [REDACTED] complaining of left arm and chest pain. The Claimant was admitted to [REDACTED] with a diagnosis of hypertension, hyperlipidemia, recent tobacco use, anxiety, DVT prophylaxis.

On [REDACTED], the Claimant underwent left heart catheterization, selective coronary angioplasty, left ventriculography and stent placement. The procedure was successfully placed a drug-elution stent of the mid LAD extending from the proximal to the mid portion covering the myocardial bridge. [REDACTED] indicated in his operative report that the Claimant had moderately progressive disease in the

Order of Reconsideration
SOAHR Docket No. 2009-25744
DHS Reg. No. 2009-21238
Reconsideration Decision

obtuse marginal branch and right coronary artery with a left ventricular function ejection fraction of 65-70 % Claimant's exhibit p B 5 - 7.

The medical evidence presented shows that in April 2008, the Claimant underwent angioplasty with stent placement. In October 2008, the Claimant underwent a second angioplasty with stent placement. [REDACTED] the Claimant's treating cardiologist indicated in a [REDACTED], Medical Examination Report that the Claimant had no physical limitations due to the Claimant's heart impairment. Department exhibit pp-21-22 Also in [REDACTED] indicated that the Claimant's cardiac disease did not physically limit the Claimant and the Claimant has no physical limitations or restrictions Department Exhibit p 22.

The Medical evidence presented indicated that the Claimant's impairments consisted of a heart condition shortness of breath depression, tobacco abuse, hyperlipodemia, and hypertension. The Claimant provided no medical evidence save a vague general diagnosis of depression of the nature and extent of his depression.

In order for a Claimant to be found disabled at Step 2, the Claimant must present medical evidence from acceptable medical sources, showing that he has a severe impairment or combination of impairments which existed or is expected to last 12 months or more which significantly limit the Claimant's ability to perform basic work.

The Claimant presented medical evidence which details a history of cardiac disease. Although the Claimant presented evidence of heart disease, the Claimant presented no evidence of the limiting effects of these impairments upon his ability to perform basic work. Furthermore, these impairments existed in an untreated state while the Claimant was performing his former work.

Because the Claimant's combined physical and mental impairments are not of the nature which would prevent the Claimant from performing basic work for the requisite 12 month period, the Claimant is not found disabled at Step 2. The ALJ was correct in making the determination that the Claimant was not eligible for disability at Step 2. The second step of the sequential analysis is a *de minimis* standard. Because the Claimant provided credible medically determined evidence that his has heart disease, the analysis must necessarily continue to the step 3. Thus, the ALJ properly proceeded from step 2 to step 3.

The Claimant may be found disabled at Step 3 if the Claimant's physical and/or mental impairments meet or equal the requirements of a Social Security listing. The Claimant's cardiac impairment could be disabling if the condition meets or equal the requirements of listing 4.04. The requirements for listing 4.04 ischemic heart disease. are as follows:

4.04 Ischemic heart disease, with symptoms due to myocardial ischemia, as described in 4.00E3-4.00E7, while on a regimen of prescribed treatment (see 4.00B3 if there is no regimen of prescribed treatment), with one of the following:

A. Sign- or symptom-limited exercise tolerance test demonstrating at least one of the following manifestations at a workload equivalent to 5 METs or less:

1. Horizontal or downsloping depression, in the absence of digitalis glycoside treatment or hypokalemia, of the ST segment of at least -0.10 millivolts (-1.0 mm) in at least 3 consecutive complexes that are on a level baseline in any lead other than aVR, and depression of at least -0.10 millivolts lasting for at least 1 minute of recovery; or

2. At least 0.1 millivolt (1 mm) ST elevation above resting baseline in non-infarct leads during both exercise and 1 or more minutes of recovery; or

3. Decrease of 10 mm Hg or more in systolic pressure below the baseline blood pressure or the preceding systolic pressure measured during exercise (see 4.00E9e) due to left ventricular dysfunction, despite an increase in workload; or

4. Documented ischemia at an exercise level equivalent to 5 METs or less on appropriate medically acceptable imaging, such as radionuclide perfusion scans or stress echocardiography.

OR

B. Three separate ischemic episodes, each requiring revascularization or not amenable to revascularization (see 4.00E9f), within a consecutive 12-month period (see 4.00A3e).

OR

C. Coronary artery disease, demonstrated by angiography (obtained independent of Social Security disability evaluation) or other appropriate medically acceptable

Order of Reconsideration
SOAHR Docket No. 2009-25744
DHS Reg. No. 2009-21238
Reconsideration Decision

imaging, and in the absence of a timely exercise tolerance test or a timely normal drug-induced stress test, an MC, preferably one experienced in the care of patients with cardiovascular disease, has concluded that performance of exercise tolerance testing would present a significant risk to the individual, with both 1 and 2:

1. Angiographic evidence showing:
 - a. 50 percent or more narrowing of a nonbypassed left main coronary artery; or
 - b. 70 percent or more narrowing of another nonbypassed coronary artery; or
 - c. 50 percent or more narrowing involving a long (greater than 1 cm) segment of a nonbypassed coronary artery; or
 - d. 50 percent or more narrowing of at least two nonbypassed coronary arteries; or
 - e. 70 percent or more narrowing of a bypass graft vessel; and
2. Resulting in very serious limitations in the ability to independently initiate, sustain, or complete activities of daily living.

The medical evidence presented shows that in April 2008, the Claimant underwent angioplasty with stent placement. In [REDACTED] the Claimant underwent a second angioplasty with stent placement. [REDACTED], the Claimant's treating cardiologist, indicated in a [REDACTED], Medical Examination Report that the Claimant had not physical limitations due to the Claimant's heart impairment. Department exhibit pp 21-22. Also in June, [REDACTED] indicated that the Claimant cardiac disease did not physically limit the Claimant and the Claimant has no physical limitations or restrictions. Department Exhibit p 22. No evidence was presented that the Claimant heart impairment seriously limited the Claimant ability to independently initiate, sustain or complete activities of daily living. Therefore, the Claimant's cardiac impairment did not meet or equal the requirements of listing 4.04.

Order of Reconsideration
SOAHR Docket No. 2009-25744
DHS Reg. No. 2009-21238
Reconsideration Decision

The Claimant alleged that he suffers from depression. The medical evidence presented shows that the Claimant's hypertension was treated with medication. No evidence was provided which details the nature or extent of the Claimant's depression. Therefore, I find that the Claimant's depression is a non-severe condition which does not meet or equal the requirements of listing 12.04 Affective Disorders.

The ALJ correctly found that the Claimant's impairments did not meet or equal the requirements of a Social Security Disability listing. The ALJ properly considered the Claimant's eligibility at Step 4

According to the information on the Claimant's DHS 49-F form and the Hearing Decision, the Claimant was formerly worked as a bus driver, newspaper delivery driver, cashier and dishwasher. The Claimant last worked in August 2005, as a dishwasher. Department exhibit p. 11; *Hearing Decision* p. 1. exhibit p. 118.

The evidence presented shows that the Claimant's former work was light work. The Claimant provided no medically determined evidence of his physical limitations. On [REDACTED] completed a DHS 49 Medicaid Examination Report. [REDACTED] indicated in his report that he first examined the Claimant on [REDACTED] after the Claimant had been admitted to the hospital due to left shoulder pain and discomfort and abnormal EKG. A subsequent heart catheterization found blockage in the left anterior descending coronary artery and in the circumflex obtuse marginal branch. [REDACTED] indicated that he last examined the Claimant on [REDACTED]. [REDACTED] indicated on page two of the report that the Claimant had no post-operative physical limitations. Department exhibit pp 20- 21.

On [REDACTED] completed a [REDACTED] with [REDACTED]. [REDACTED] indicated that the Claimant had a Class I functional capacity or cardiac disease without physical limitations. [REDACTED] also indicated that the Claimant's therapeutic classification was Class B or cardiac disease which did not required a restriction of physical activity but should be advised against severe or competitive physical efforts. Department Exhibit p 22.


In October 2008, the Claimant underwent his second angioplasty with stenting. No subsequent medical information was provided by the Claimant which details the Claimant's post-October 2008, angioplasty physical limitations. The Claimant was given two opportunities following the granting of reconsideration to submit medical evidence. The Claimant failed to provide any additional medical evidence. Based on the medically determined evidence presented, I must conclude that the Claimant did not have any exertional or non-exertional limitations which would prevent the Claimant from performing his former light work. Therefore, I find that the ALJ did not err when he found that the Claimant had the residual functional capacity to perform to perform the

Order of Reconsideration
SOAHR Docket No. 2009-25744
DHS Reg. No. 2009-21238
Reconsideration Decision

Claimant's former work. Despite this finding the ALJ considered the Claimant's disability at Step 5.

At Step 5, the Department has the burden of establishing that despite the Claimant's limitations, he has the Residual Functional Capacity to perform work in the national economy. Residual Functional Capacity is defined as what the Claimant can do despite her limitations. Residual Functional Capacity also includes an assessment of the Claimant's physical and mental abilities. The physical demands of jobs in the national economy are classified as sedentary, light, medium, heavy, or very heavy. The more physically demanding classification includes all less demanding classifications. For example, a classification of very heavy includes all other less physically demanding classifications. Sedentary work is defined as work which involves the lifting or carrying of files, ledgers, small tools, and similar items. Sedentary work presumptively includes sitting but also includes some necessary walking and standing. Light work involves the lifting of no more than 20 pounds at a time and the frequent lifting or carrying of objects weighing less than 10 pounds. Light work may involve significant walking or standing. Absent a loss of dexterity or other limiting factors, typically those who can do light work can do sedentary work. Medium work involves the lifting of objects of 50 pounds or less with frequent lifting or carrying of objects which weigh 25 pounds or less. A person who can do medium work can typically do light and sedentary work. Heavy work involves the lifting of 100 pounds or less with frequent lifting of objects weighing 50 pounds or less. People who can do heavy work can typically do medium, light, and sedentary work. Very heavy work involves the lifting of objects weighing 100 pounds or more and the frequent carrying or lifting of objects weighing 50 pounds or more. A person who can do very heavy work can typically do heavy, medium, light, and sedentary work.

The evidence presented shows that the Claimant is a 52 year old individual with less than a high school education. The medically determined evidence presented does not show that the Claimant's physical limitations were so severe that those limitations prevented the Claimant from performing light or sedentary work. The Claimant failed to provide medically determined evidence which shows that the Claimant had any exertional or non-exertional limitations. The Claimant's treating cardiologist indicated in a June 2008, report that the Claimant had minor exertional limitations. No evidence was provided that the Claimant had exertional limitations after his October 2008, surgery. The Claimant's treating physician indicated that the Claimant was depressed but there is no evidence which detail the nature and extent of the Claimant's depression. There is no evidence that the Claimant's non-exertional limitations would prevent him from engaging in substantial gainful employment at the light or sedentary work level. Therefore, the ALJ correctly found that the Claimant had the residual functional capacity to perform light and sedentary work.


Order of Reconsideration
SOAHR Docket No. 2009-25744
DHS Reg. No. 2009-21238
Reconsideration Decision

An application of the Claimant's vocational factors to the applicable vocational rules at 20 CFR Pt. 404, Subpt. P, App. 2,202.10 render the Claimant not disabled. The ALJ correctly concluded that the vocational rules rendered the Claimant not disabled.

Because the Claimant was not found disabled for each of the three months prior to the date of his application, he is ineligible for Retro MA-P. Therefore, the MRT, the SHRT, and the ALJ all correctly denied retro MA-P.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Administrative Law Judge did not err when he found that the Claimant was not disabled.

IT IS THEREFORE ORDERED that:

The Administrative Law Judge's decision mailed April 7, 2009, is
AFFIRMED.

/s/ _____

Martin D. Snider
Administrative Law Judge
For Michigan Department of Human Services

cc:



Date Signed and Mailed December 4, 2009

*****Notice*****

The Claimant may appeal this Rehearing Decision to Circuit Court within 30 days of the mailing of this Rehearing Decision.