

**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. 2009-25647 REHD
DHS Reg. No. 2009-18963


Claimant

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 July 13, 2009.

ISSUE

Did Claimant meet the disability standard for Medical Assistance based on disability (MA-P) and State Disability Assistance (SDA)?

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 September 27, 2006, Claimant applied for MA-P.
2. On May 27, 2008, the Medical Review Team (MRT) determined that Claimant was ineligible for MA-P benefits.
3. On August 19, 2008, Claimant filed a hearing request with the State Office of Administrative Hearings and Rules (SOAHR), contesting the denial of MA-P benefits.
4. On October 23, 2008, the State Hearing Review Team (SHRT) determined that Claimant was ineligible for MA-P benefits.
5. On December 10, 2008, Administrative Law Judge (ALJ) Judith Ralston Ellison. held a properly noticed hearing

6. On March 12, 2009, ALJ Judith Ralston Ellison issued a Hearing Decision in which she affirmed the Department's decision that the Claimant was not disabled and decision to deny MA-P benefits.
7. On April 15, 2009 SOAHR received the Claimant's Request for Rehearing/ Reconsideration. The Claimant's representative indicated in it's request that the Social Security Administration had issued a determination that the Claimant was disabled.
8. On June 18, the Social Security Administration (SSA) found the Claimant disabled, effective July 2, 2007.
9. Findings of Fact 1- 10 from the Hearing Decision dated March 12, 2009 are incorporated by reference in this Reconsideration Decision.

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 Department of Human Services (DHS or Department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department 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 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.

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 measure. An individual's functional capacity for doing basic work 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).

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:

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 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).

DHS policy at PEM 150 and PEM 260 provides that a Social Security Administration determination that an applicant is disabled is binding on DHS. On June 18, 2009, the SSA notified that Claimant that the SSA had determined that effective July 2007, the Claimant was disabled. Because of the SSA determination that Claimant is disabled, it is not necessary for this Administrative Law Judge to discuss the issue of disability for the period July 2007 to the date of this decision. According to the SSA disability determination, the Claimant, effective July 2, 2007, met the MA-P disability standard.

The evidence presented shows that on September 27, 2006, the Claimant applied for MA-P. The SSA determination is only binding for the period after June 2007, to present. Therefore, based on the SSA determination, the Claimant is not eligible for MA-P benefits dating back to June, 2006, but is determined to be disabled from the July 2, 2007 SSA disability onset date .

On September 27, 2007, the Claimant applied for MA-P and Retro MA-P. On September 3, 2006, the Medical Review Team (MRT) reviewed the Claimant's application and medical file and found the Claimant was not disabled. The MRT denied

SOAHR Docket No. 2009-25647 REHD
DHS Reg. No. 2009-18963
Reconsideration Decision

MA-P because the Claimant had the residual functional capacity to perform substantial gainful work in the national economy. SDA was approved.

On October 23, 2008, the State Hearing and Review Team (SHRT) found the Claimant was not disabled and denied the Claimant's application for MA-P and retro MA-P because the Claimant had the residual functional capacity to perform his past relevant work. The ALJ's March 12, 2009, Hearing Decision considered the Claimant's disability from the Claimant's September 2006, application date.

At Step 1 the ALJ correctly concluded that the Claimant was not engaged in Substantial gainful employment. The evidence presented shows that the Claimant last worked in 1998 as a machine operator. The ALJ correctly considered the Claimant's disability at Step 2.

The Claimant alleges the following impairments: arthritis, shortness of breath, back pain and heart attack.

On [REDACTED], the Claimant was admitted to [REDACTED]. The Claimant presented with chest pain, unstable angina with a nonQwave myocardial infarction. Subsequently, a cardiac catheterization and coronary angiography were completed. Angioplasty with stenting was successfully performed. On June 27, 2006, the Claimant was discharged Department exhibit p 1-8.

[REDACTED] indicated in his [REDACTED], report that his impression was Obstructive disease involving the left circumflex obtuse marginal branch and involving the left anterior descending artery with a normal ejection fraction of 55%.

On [REDACTED] completed a DHS-49 Medical examination report. [REDACTED] indicated that he first examined the Claimant on June 22, 2006, and last examined the Claimant on June 27, 2006. [REDACTED] indicated in his report that the Claimant's condition was stable and improving, that the Claimant had no physical limitations, that the Claimant could frequently list 25 lbs and could stand and/or walk 6 hours in an 8 hours day. [REDACTED] also indicated that the Claimant could use his hands arms for grasping reaching pushing pulling and fine manipulation. The Claimant also could use both feet and legs to operate foot controls Department exhibit pp-45-46.

On April 28, 2008, the Claimant under went a consultative medical examination by [REDACTED]. [REDACTED] Internist. The Claimant told [REDACTED] that the Claimant had lower back pain for ten (10) years with pain radiating down his right leg. The Claimant told [REDACTED] that the Claimant could walk two or three blocks, could climb a flight of stairs and could lift 10 to 20 lbs. [REDACTED] indicated in his report that his impression was that the Claimant had osteoarthritis of the lumbar spine and right knee joint. The Claimant's only functional limitation was that the Claimant could not squat more than 80 percent. Department exhibit pp-15-16.

The Claimant alleged that he has a back impairment with sciatic nerve involvement and arthritis. The medical information provided, save the April 2008, consultative examination, is devoid of any medical opinion from an acceptable medical source or otherwise which provided a medical opinion or evidence which shows that the Claimant has a back impairment or arthritis.

On May 7, 2008, the Claimant was admitted to [REDACTED] with a fractured left ankle. The fracture was surgically repaired. [REDACTED] indicated in his report that the fracture was successfully repaired, and the Claimant was sent home.

[REDACTED], [REDACTED], indicated in his May 7, 2008 report that the Claimant had a commuted fracture of the distal tibial shaft and distal fibula shaft. [REDACTED] indicated in his report that there was an open reduction and interfixation with a metallic plate and screw. Department Exhibit p 2-3.

The medical evidence presented shows that in June 2006, the Claimant suffered a myocardial infarction which was successfully treated with angioplasty and stenting. The evidence also shows that almost two (2) years after the Claimant's heart attack the Claimant fell and suffered a fracture of his left ankle. The Claimant's back impairment and arthritis were not evaluated by an acceptable medical source, save the April 2008, consultative examination. The nature and extent of these alleged impairments is not known. The Claimant's [REDACTED] is the only treating source that provided his opinion regarding the Claimant's exertional limitations. [REDACTED] completed a DHS Medicaid examination Report one (1) week after the Claimant's June 2006, heart attack. No evidence was provided which shows that the Claimant's physical limitations in the 12 months period after the Claimant's heart attack.

The medical evidence presented shows that the Claimant's heart attack was a severe condition which could significantly limit his ability to engage in basic work. However, there is insufficient medically determined evidence to find that the Claimant's heart condition significantly limited his ability to engage in basic work for 12 continuous months.

The Claimant's left ankle fracture occurred almost two (2) years after the Claimant's June 2006, heart attack. The Claimant's back impairment and arthritis while ongoing are not adequately documented by medical evidence. Thus, it is not possible to gauge the affect of these impairments on the Claimant's ability to engage in basic work. The Claimant's ankle fracture was successfully surgically repaired in May of 2008. No medical evidence was providing which indicates that the Claimant's left ankle fracture significantly limited his ability to engage in basic work for 12 continuous months. There is neither a logical, nor medically determined nexus between the Claimant's heart condition, back pain, arthritis and left ankle fracture. The combination of these impairments must be considered when determining the severity of the impairments but the combination may not be used as a basis for establishing duration.

Because the evidence presented shows that the Claimant had heart impairment and left ankle fracture (two years after his heart attack) and because the finding of a severe impairment at Step 2 is a *de minimis* standard, the ALJ correctly continued her analysis at Step 3. Therefore, the ALJ was correct in finding that Claimant was not disabled at Step 2 and correctly proceeded to Step 3.

The Claimant impairments of heart disease, back pain lefty ankle fracture and arthritis could arguably meet or equal the requirements of a Social Security Disability Listing. Listing 4.00 Cardiovascular specifically listing 4.02 Ischemic Heart Disease. The requirements of this listing 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 a VR, 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 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 provided shows that the June 2006, the Claimant suffered a myocardial infraction and underwent successfully angioplasty with stenting. The Claimant did not require any subsequent angioplasty and there is no evidence that the Claimant was physically limited following his June 2006, surgery. The Claimant's heart condition and related hypertension were successfully treated post surgically with

medications. Therefore, the ALJ correctly found that the Claimant's heart impairment did not meet or equal the requirements of listing 4.00.

The Claimant's back impairment and left ankle fracture were also considered by the ALJ. The ALJ correctly found that the Claimant back impairment did meet or equal a listing. 1.00 Musculoskeletal System. The ALJ correctly found on page 7 of her Hearing Decision that there was no medical evidence regarding the nature and extent of the Claimant's back condition. The Claimant's left ankle fracture could arguably meet listing 1.02 and 1.03 if the Claimant provides sufficient evidence to show that following his successful surgery he met the requirements of the listing. The medical evidence provides shows that the Claimant's ankle fracture was successfully surgical repaired almost two (2) years after his June 2006 heart attack. The ALJ correctly found that the Claimant's back and ankle impairments did not meet or equal the requirements of listing 1.00 and correctly found that the Claimant's heart impairment did not meet or equal the requirements of listing 4.00. The ALJ correctly proceeded to Step 4.

The ALJ correctly found at Step 4 that the Claimant's past relevant work was making drapes and factory work. The DHS 49-F form completed by the Claimant indicated that the factory work was heavy and very heavy work and that the Claimant performed this work from 1994 to 1998. The Claimant indicated that his last work was making drapes and that he was not longer able to perform this former work.

The ALJ correctly found that the Claimant was able to perform his former work. The medical evidence in the record was devoid of any medically determined evidence that the Claimant's impairments were physically limiting. The only evidence of physical limitations was provided by the Claimant's cardiologist one (1) week after the Claimant's June 2006 heart surgery. No medically determined evidence, from an acceptable medical source, was provided which shows that the Claimant back and ankle fracture prevented the Claimant from performing his former work. The ALJ correctly found that the Claimant was able to perform his former medium work and despite this finding proceeded to Step 5.

At Step 5 the ALJ considered the Claimant's residual functional capacity to perform other work in the national economy. The ALJ correctly concluded based on the medical evidence provided that the Claimant had the residual functional capacity to perform medium work. The ALJ then correctly applied the Claimant vocation factors to the vocational rules provided in Appendix 2 Subpart P table No 1-Residual Functional Capacity; Maximum Sustained Work Capability Limited to medium work was a Result of Severe Medically Determined Impairment(s), Rule 203.11. The evidence presented shows that the Claimant was 58 years of age with a high school or less educational back ground with the ability to read and write with an unskilled work history. According to vocational rule 203.11 the Claimant is not disabled. The ALJ, based on the evidence provided, correctly applied the vocational rules at Step 5 and found that the Claimant was not disabled.

[REDACTED]
SOAHR Docket No. 2009-25647 REHD
DHS Reg. No. 2009-18963
Reconsideration Decision

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DECISION AND ORDER

This Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Administrative Law Judge's Decision and Order, mailed March 12, 2009 is REVERSED in part. The Claimant, pursuant to the SSA disability determination was disabled effective July 2, 2007. The Administrative Law Judge's conclusion that the Claimant was not disabled for the period June 2006 thru June 2007 is AFFIRMED.

Accordingly, if it has not already done so, the Department of Human Services is ORDERED to determine the Claimant's non medical eligibility for Medical Assistance and all other applicable benefits effective July 2007 pursuant to the aforementioned SSA decision

/s/ _____
Martin D. Snider
Administrative Law Judge
for Michigan Department of Human Services

cc:

[REDACTED]

Date Signed: 8/28/2009
Date Mailed: 8/31/2009

*****Notice*****

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