

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201224245
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: March 12, 2012
Wayne County DHS (17)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for hearing. After due notice a telephone hearing was held on March 12, 2012. The Claimant appeared and testified. [REDACTED], Medical Contact Worker appeared and testified on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P) benefit program?

FINDINGS OF FACT

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

1. Claimant applied for MA-P on September 15, 2011.
2. On November 22, 2011, the Medical Review Team (MRT) determined that the Claimant was not disabled. (Exhibit 1)
3. On November 22, 2011, the Department notified the Claimant of the MRT determination. (Exhibit 1)
4. December 9, 2011, the Department received the Claimant's timely written request for hearing. (Exhibit 1)

5. On February 8, 2012, the State Hearing Review Team (SHRT) found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued on March 12, 2012 ordering the Department to obtain treatment records from [REDACTED], a DHS 49 exam from [REDACTED] and assault medical record.
7. The Department did not comply with the Interim Order.
8. Claimant alleged physically disabling impairments due to diabetes, excessive weight loss due to diabetes, loss of balance and diminished strength in his legs and pain at his waist.
9. The Claimant did not allege any mental disabling impairment.
10. On the date of the hearing Claimant was [REDACTED] years of age with an [REDACTED] birth date. Claimant is 5'5" and weighed approximately 142 pounds.
11. The Claimant obtained a GED.
12. The Claimant is not currently participating in substantial gainful activity and has not worked since August 2011.
13. The Claimant has a prior work history consisting of employment as a parking garage valet, a supervisor for a chemical plant paint extraction chemical handling operation, landscape and maintenance work and was also a supervisor, a fork lift operator and loader of plastic into machines, general labor, sorting mail, garbage pick up, and unloading and stocking frozen food products for a grocery chain and driving a hi-lo.
14. The Claimant's impairments have last or are expected to last 12 months or more.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (RFT).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges

Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (RFT).

Federal regulations require that the Department use the same operative definition of the term “disabled” as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

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.

This is determined by a five step sequential evaluation process including whether the Claimant is engaged in current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five step sequential evaluation, and when a determination can be made at any step as to the claimant’s disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920

The first step that must be considered is whether the claimant is still partaking in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. In the current case, as outlined above, the first step looks at the individual’s current work activity. In the record presented, Claimant has testified that he is not working and is not involved in substantial gainful activity, and therefore is not ineligible for disability benefits under Step 1.

The second step that must be considered is whether or not the claimant has a severe impairment. The severity of the Claimant’s alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual’s physical or mental ability to perform basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). The impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). The term “basic work activities” means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples of these 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. 20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are “totally groundless” solely from a medical standpoint. This is a *de minimus* standard in the disability determination that the court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, Claimant has presented medical evidence of a hospitalization for severe weakness, chest palpitation and severe uncontrolled diabetes. The Claimant was admitted for a four day hospital stay on [REDACTED]. On discharge he was treated for mixed respiratory and metabolic disturbances. He was diagnosed with acute respiratory alkalosis and acidosis, likely from starvation and uncontrolled diabetes.

The Claimant testified that he receives ongoing treatment for his conditions from [REDACTED]. Although records from [REDACTED] were ordered and a DHS 49 evaluation was also ordered, no new evidence was provided by the Department.

The Claimant also had a consultative examination completed on [REDACTED]. The exam noted diabetes and some blurred vision with no vision loss. The exam noted that the Claimant may need to check glucose levels during a work shift and no other restrictions were noted and no other medical records were available to the examiner.

The Administrative Law Judge finds that the Claimant’s medical evidence as summarized above presents sufficient objective medical evidence to substantiate the alleged disabling impairment(s), establishing that he does have some physical limitations on his ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimus* effect on the Claimant’s basic work activities. Further the impairment has lasted continuously for twelve months; therefore, the Claimant is not disqualified, and is therefore enough to pass step two of the sequential evaluation process.

In the third step of the sequential evaluation, the trier of fact must determine if the Claimant’s impairments, or combination of impairments is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This is, generally speaking, an objective standard; either claimant’s impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of “not disabled”; if the claimant’s impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that the Claimant's medical records do not contain medical evidence of an impairment that meets or equals a listed impairment. Listing 9.00 5 (a) (1) Endocrine Disorders, diabetes mellitus and other pancreatic gland disorders was considered and reviewed as was Listing 12.04.Affective Disorders, Depression. Ultimately, based on the medical evidence, it is found that the Claimant's impairments do not meet the intent and severity and specific requirements of a listed impairment. Therefore, the Claimant cannot be found to be disabled at this step, based upon medical evidence alone. 20 CFR 416.920(d). We must thus proceed to the next step, step 4 in the sequential evaluation.

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

To determine the physical demands exertional requirements e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967.

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

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.*

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity to the demands of past relevant work must be made. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (e.g., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The Claimant's prior work history consists of employment as a parking garage valet, a supervisor for a chemical plant paint extraction chemical handling operation, landscape and maintenance supervisor and worker, a fork lift operator and loader of plastic into machines, general labor, sorting mail and garbage pick up, and unloading and stocking frozen food products for a grocery chain and driving a hi-lo.

In light of the Claimant's testimony and records, and in consideration of the Occupational Code, the Claimant's prior work is classified as unskilled medium to heavy and semi-skilled light to medium work.

The Claimant credibly testified that he is able to walk about 3 blocks, lift/carry up to 15 pounds; and that he can stand for four hours and can sit only 15 minutes due to pain in his waist and legs. The Claimant also testified that he loses balance when showering.

The objective medical evidence places that Claimant at mild activity. The medical evidence does not contain physical restrictions placed upon the Claimant by his doctors, as the additional medical evidence ordered to be obtained by the Department was not obtained. If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920.

In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is not able to return to past relevant work; thus, the fifth step in 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). The Claimant is [REDACTED] years old and, thus, is considered to be of a person closely approaching advanced age for MA-P purposes, however the undersigned notes and considered the following direction provided in the SSA regulations when a Claimant is very close to the next age category:

Please consider 416.963(b):

When we make a finding about your ability to do other work under § [416.920\(f\)\(1\)](#), we will use the age categories in paragraphs (c) through (e) of this section. We will use each of the age categories that applies to you during the period for which we must determine if you are disabled. We will not apply the age categories mechanically in a borderline situation. If you are within a few days to a few months of reaching an older age category, and using the older age category would result in a determination or decision that you are disabled, we will consider whether to use the older age category after evaluating the overall impact of all the factors of your case. In this case based upon the foregoing considerations it is determined that the Claimant will be evaluated as a person of advanced age 55 or over.

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).

In this case, the evidence reveals that the Claimant suffers from diabetes which is difficult to control and has been hospitalized and treated for diabetes. The Claimant also

regularly sees a treating physician but no medical evidence was obtained or submitted as ordered by the Interim Order issued in this case. The Claimant testified that he can dress himself and tie his shoes, but does not have the strength he had previously due to severe weight loss and his diabetes. He has had episodes of losing his balance and cannot walk further than 3 blocks, has pain at the waist and legs and can lift between 15 or 20 pounds. Due to the failure of the Department to provide additional medical evidence as ordered and in light of the Claimant's ongoing treatment for continuing diabetes and other physical limitations, the undersigned has determined to resolve any ambiguity in favor of the Claimant. In consideration of the foregoing and in light of the objective limitations, it is found that the Claimant retains the residual functional capacity for work activities on a regular and continuing basis to meet at the physical and mental demands required to perform light work in 20 CFR 416.967(b).

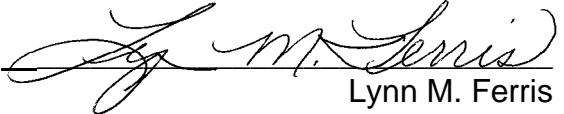
After review of the entire record, the testimony of the Claimant and the medical evidence and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 202.06, (advanced age) it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant disabled for purposes of the MA-P and SDA benefit programs.

Accordingly, It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate processing of the September 15, 2011 application to determine if all other non-medical criteria are met and inform the Claimant of the determination, in accordance with Department policy.
3. The Department shall supplement for any lost benefits (if any) that the Claimant was entitled to receive in accordance with the September 15, 2011 application and any retroactive period, if otherwise eligible and qualified in accordance with Department policy.
4. The Department shall review the Claimant's continued eligibility in July 2013 in accordance with Department policy.


Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 30, 2012

Date Mailed: July 30, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases).

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail to:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

cc:

