

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

IN THE MATTER OF:

[REDACTED]

[REDACTED]

Case No.:
Hearing Date:
DHS County:

[REDACTED]

Oakland County (03)

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 the Claimant's request for a hearing. After due notice, a telephone hearing was held in Detroit, Michigan, on April 30, 2012. The Claimant appeared and testified. [REDACTED] also appeared and testified as a witness for the Claimant. [REDACTED], Assistance Payments Supervisor, appeared on behalf of the Department of Human Services ("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 on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Claimant submitted an application for public assistance seeking MA-P benefits and retro benefits on October 25, 2011.
2. On February 7, 2012, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp.)
3. The Department notified the Claimant of the MRT determination on February 7, 2012.
4. On February 16, 2012, the Department received the Claimant's timely written request for hearing.

5. On April 4, 2012 the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued on May 4, 2012 to obtain new medical evidence and updated medical examinations. The new evidence was submitted to the State Hearing Review Team on August 21, 2012.
7. On October 5, 2012 the State Hearing Review Team found the Claimant not disabled.
8. The Claimant alleges physical disabling impairments of peripheral neuropathy in his left foot, hypertension and low back pain in the lumbar spine.
9. The Claimant has not alleged any mental disabling impairment.
10. At the time of hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth date. Claimant is 6’1” in height; and weighed 230 pounds.
11. The Claimant has a high school education and an employment history working in a factory as a racker selecting car parts from bins and hanging car parts weighing anywhere from 10 to 30 pounds on a hanger. The Claimant also drove a hi-lo as an order selector for hospital supplies, selecting supplies and loading them on a pallet. Both of these jobs required standing most of the day. The Claimant also drove a hi-lo and selected orders for a grocery chain and also lifted and carried frozen foods weighing between 30 to 40 pounds.
12. The Claimant’s impairments have lasted or are expected to last for 12 months’ duration or more.

CONCLUSIONS OF LAW

The Medical Assistance (“MA”) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, formerly known as the Family Independence Agency, 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 (“BRM”).

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the

SDA program pursuant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity and, therefore, is not ineligible for disability benefits under Step 1.

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. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;

4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting.

Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

The Claimant alleges physical disabling impairments of peripheral neuropathy in his left foot, hypertension and low back pain in the lumbar spine. The medical evidence produced at the hearing and new medical evidence follows.

On [REDACTED] a Medical Examination Report was completed by the Claimant's primary care physician. The report noted Claimant's condition as stable and noted limitations of lifting of 10 pounds occasionally 1/3 of an 8-hour day, no assistive device was required, and no sitting restriction was made. The report noted left foot numbness, tingling pain and decreased sensation.

On [REDACTED] the a Medical Examination Report was completed by the Claimant's treating neurologist which noted that stocking glove pattern, vibration decreased distal extremities, in left foot. The report noted abnormal MRI knee, MRI of lumbar spine and EMG as the findings supporting the diagnosis of peripheral neuropathy. MRIs revealed denervation, myositis in the left gastroc. EMG showed changes bilaterally consistent with poly neuropathy. The report evaluated limitation and found that the patient could lift less than 10 pounds frequently 2/3 of an 8-hour day and could stand and or walk less than 2 hours in an 8-hour work day.

On [REDACTED] a Medical Examination Report was completed by the Claimant's primary care physician. The report noted peripheral neuropathy and hypertension. Weakness in left leg was noted limited the Claimant to never lifting less than 10 pounds and that he could not operate foot controls with either foot. The report notes the

claimant was unable to return to work after a two day attempt but could not bear pain and symptoms have not improved.

A review of office visit notes indicates consistent treatment every two months in [REDACTED] 2012. The office visit notes indicate that patient has pain while walking and that socks and shoes irritate him and that blood pressure was uncontrolled. In [REDACTED] the report notes severe pain in foot and that gait is favored to right side. On [REDACTED] the report notes sensation of tightness in foot at all times, although less pain and wearing socks make his foot worse.

An MRI of the lumbar spine was conducted on [REDACTED] and noted at L4-L5 an eccentric bulging to the right. There is mild deformity of the anterior right aspect of the thecal sac and there is marked facet neuropathy on the right; there is some right sided neural foraminal compromise and impingement on the exiting right L4 root. The report impression noted degenerative changes seen in the lumbar spine. Loss of disc space hydration at every lumbar level.

A report on [REDACTED] by Claimant's neurologist notes that the EMG confirmed absent tibial response. The reports note limping and significant trouble walking; he cannot play sports. Differential diagnosis was therefore established as tibial mononeuropathy

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some medical evidence 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 minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged physical impairments due to peripheral neuropathy in his left foot, hypertension and low back pain in the lumbar spine.

Listing **11.14 Peripheral neuropathies**. With disorganization of motor function as described in 11.04B, in spite of prescribed treatment was reviewed. 11.04 B requires significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C). A review of this listing indicates that the evidence of records does not allow

the listing to be met as motor function in two extremities is required. In the Claimant's case only one extremity is currently affected.

Listing 4.00 Cardiovascular systems was also reviewed for the Claimant's hypertension diagnosis. **H. Evaluating Other Cardiovascular Impairments**

1. *How will we evaluate hypertension?* Because *hypertension* (high blood pressure) generally causes disability through its effects on other body systems, we will evaluate it by reference to the specific body system(s) affected (heart, brain, kidneys, or eyes) when we consider its effects under the listings. We will also consider any limitations imposed by your hypertension when we assess your residual functional capacity.

There were no objective medical evidence presented to substantiate the hypertension affected other body systems and thus it must be concluded that the listing is not met.

Lastly 1.04 A Musculoskeletal Systems was reviewed and it was found that the medical evidence was insufficient to support the finding that this listing was met.

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

The fourth step in analyzing a disability claim requires an assessment of the claimant's 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) 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 (exertional requirements, e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) 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 performing a racker selecting car parts from bins and hanging car parts weighing anywhere from 10 to 30 pounds on a hanger. The Claimant also drove a hi-lo as a order selector for hospital supplies, selecting supplies and loading them on a pallet. Both of these jobs required standing most of the day. The Claimant also drove a hi-lo and selected orders for a grocery chain and also lifted and carried frozen foods weighing between 30 to 40 pounds.

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 work.

The Claimant credibly testified that he is not able to walk any significant distance (1/2 block) due to left foot pain nor can he stand without pain, sometimes severe and thus cannot stand for more than 20 minutes. He can bend at waist and is able to shower and dress himself. The objective medical evidence regarding the Claimant does significantly limit the Claimant by both his treating primary care physician and his treating neurologist. Further Claimant's treating physician's most recent evaluation after numerous visits limited the Claimant to never lifting less than 10 pounds and that he could not operate foot controls with either foot. The report notes the claimant was unable to return to work after a two day attempt, and could not bear pain and symptoms have not improved. The claimant's treating neurologist also found significant limitations and found that the patient could lift less than 10 pounds frequently 2/3 of an 8 hour day and could stand and or walk less than 2 hours in an 8 hour work day.

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 younger individual for MA purposes. The Claimant is a high school graduate. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful

employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F.2d 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 F.2d 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 F.2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

In this case the evidence reveals that the Claimant complains of back pain and has hypertension, but the most relevant medical condition is his peripheral neuropathy in his left foot. The evaluations of the treating physician are addressed under 20 CFR § 404.1527(d)(2), the medical conclusion of a "treating" physician is "controlling" if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record. Deference was given to both the tests and observations of the Claimant's treating physician and treating neurologist.

In this case the evidence and objective findings reveal that the claimant suffers from physical disabling impairments due to peripheral neuropathy. The objective medical evidence provided by both the Claimant's treating primary care physician and his treating neurologist place the Claimant at the less than sedentary activity level. The total impact caused by the physical impairment suffered by the Claimant must be considered. In doing so, it is found that the Claimant's physical impairments have a major impact on his ability to perform basic work activities. Accordingly, it is found that the Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a). After review of the entire record, and in consideration of the Claimant's age, education, work experience and residual functional capacity it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.


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.

Accordingly, It is ORDERED:

1. The Department is ordered to initiate processing of the Claimant's Ma-P, Retro MA-P and SDA application dated October 25, 2011 and award required benefits, provided Claimant meets all non-medical eligibility requirements.
2. The Department shall initiate review of the Claimant's disability case in October 2013, in accordance with Department policy.


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

Date Signed: October 29, 2012

Date Mailed: October 29, 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.

2012-34824/LMF

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Re consideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

LMF/cl

cc:

