

5. October 16, 2012 the State Hearing Review Team, (SHRT) found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on January 17, 2013 ordering the Department to obtain and a consultative psych and medical examination.
7. The new evidence was provided to the State Hearing Review Team (SHRT) on March 12, 2013, and the SHRT denied disability and found the Claimant not disabled on May 28, 2013.
8. Claimant is 50 years old with a birth date of [REDACTED]
9. Claimant completed a GED.
10. Claimant has employment experience (last worked 2009) as a landscape foreman and a mover, driver and foreman for a moving company.
11. Claimant has alleged physical impairments due to migraine headaches, nausea and vomiting, brain aneurysm, hypertension, diabetes mellitus and diabetic neuropathy, and neck pain post cervical fusion.
12. The Claimant alleges mental disabling impairments due to depression.
13. Claimant has significant limitations on physical activities involving sitting, standing, walking, bending, lifting and stooping.
14. The Claimant's impairments have lasted or will continue to last 12 months or more.

CONCLUSIONS OF LAW

MA-P 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 administers MA-P 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).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. 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.

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 are 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.

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 symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

The residual functional capacity 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.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is “severe” or a combination of impairments that is “severe.” 20 CFR 404.1520(c). An impairment or combination of impairments is “severe” within the meaning of regulations if it significantly limits an individual’s ability to perform basic work activities. An impairment or combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the claimant’s residual functional capacity. 20 CFR 404.1520(e). An individual’s residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, the trier must consider all of the claimant’s impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the claimant has the residual functional capacity to do his/her past relevant work, then the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual’s residual functional capacity is considered in determining whether disability exists. An individual’s age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Claimant has alleged physical impairments due to migraine headaches, nausea and vomiting, brain aneurysm, hypertension, diabetes mellitus and diabetic neuropathy, and neck pain post cervical fusion.

The Claimant alleges mental disabling impairments due to depression.

A review of the Claimant's medical evidence follows. A consultative psychiatric exam was conducted on [REDACTED]. The examiner noted the Claimant reported no psychiatric history and never diagnosed with a mental illness and sleeps between 2 and 5 hours per night.

The examiner noted that the Claimant is easily distracted and his ability to attend to specific stimulus without being distracted is poor. Ability to sustain attention over an extended period of time is poor and he could not remember digits forward or backward and repeated himself more than once. The Claimant took a long time to respond to questions and appeared affected by his aneurysm. Claimant appeared to have trouble finding the words to express himself. The Claimant's affect was sad and anxious. The impressions were a 50-year-old man who has suffered 2 aneurysms which seem to have slowed him down, the diagnosis was adjustment disorder with anxiety. The GAF score was 60. Cannabis abuse was noted and a learning disorder was noted. The examiner concluded that the Claimant's ability to relate to others, and fellow workers is within normal limits. Claimant's ability to understand, remember and carry out tasks depends on how complex the task is, can perform simple repetitive tasks but at a reduced speed. Ability to maintain attention, concentration, persistence and pace to perform routine tasks is moderately impaired, may not be able to maintain focus effectively if he has multiple things to do. Ability to withstand stress is mildly impaired. He may not deal with situational stressors appropriately or adaptively if he feels pressured. Prognosis is hopeful if he has a stable place to stay and if he is productive.

A Mental Residual Functional Capacity Assessment was also performed. The Claimant was assessed as markedly limited in ability to maintain attention and concentration for extended periods and to be aware of normal hazards and take appropriate precautions. In social interaction the Claimant was not limited. The remainder of the exam found the Claimant moderately limited.

Another consultative psychological examination and evaluation of mental status was done on [REDACTED]. The exam concluded that Claimant displayed average intelligence with intact mental capacities and very slightly diminished concentration and remote memory, inconsistently displayed. His functioning appeared adequate from a mental health standpoint. Diagnosis was rule out Depressive Disorder, no GAF score was provided or prognosis. Due to the failure to include prognosis and GAF score it was determined that this examination was of little value.

In [REDACTED] the Claimant was admitted for 6 day hospital stay at which time the Claimant underwent an angiogram and post coil embolization. At that time a second aneurysm was also noted but no medical treatment was administered. The discharge diagnosis was basilar artery aneurysm status post coil embolization, persistent anterior communicating artery aneurysm, diabetes, hypertension and smoking. The record also notes a cervical fusion at C5, C6 and C7 ten years ago. The hospital notes indicated that the vomiting felt to be due to focal inflammation at the tip of the artery which was treated with coiling.

On [REDACTED] the Claimant was admitted to the hospital for migraine and vomiting. A prior admission on [REDACTED] as result of a cerebral angiogram which discovered another aneurysm in left anterior communicating artery. The result of this admission was coil embolization of the aneurysm. The hospital course noted Claimant had just been previously treated for headache at ER several days prior.

On [REDACTED] the Claimant was admitted for a three day stay due to headache and cerebral aneurysm and abdominal pain. The Diagnosis was dyslipidemia, smoking cerebral aneurysm, abdominal pain. At this admission the previously seen aneurysm was seen but noted as appearing stable based on an MRI.

The Claimant was admitted on [REDACTED] 012 for one day reporting severe headache, nausea and vomiting and neck pain. Primary diagnosis migraine, and secondary diagnosis marijuana abuse, hypertension, dyslipidemia, diabetes mellitus type II, with peripheral neuropathy and cerebral aneurysm. The Claimant's migraines improved with stay. Neurological exam was unremarkable on discharge. A CT of head was negative. The musculoskeletal evaluation was generalized weakness. Claimant had not eaten for 3 days. The assessment was migraine headaches, history of brain aneurysms X2 and diabetic neuropathy and chronic marijuana use.

A consultative medical exam was conducted of [REDACTED]. The exam of the neck showed muscle spasm with painful range of motion. Exam of the lower back reveals the patient has muscle spasm with painful range of motion, but straight leg raising test is positive about 30-40 degrees bilaterally. The assessment was headache, dizziness status post brain aneurysm with a coiling, diabetes diabetic neuropathy, high blood pressure, chronic neck pain, tobaccoism and history of marijuana. The patient has lost two point discrimination of both lower extremities. The patient does have significant medical problems, and needs treatment for aortic aneurysm about 3.1 cm (1.22 inches) and headache, dizziness, high blood pressure and diabetes. The consultative examiner imposed limitations as follows: The Claimant could lift less than 10 pounds frequently, and never more than 10 pounds, could stand or walk less than 2 hours in an 8-hour work day and could not operate foot/leg controls.

Here, Claimant has satisfied requirements as set forth in steps one, two of the sequential evaluation. However, Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Listings 11.08 Cerebral Trauma, 1.04 Disorder of the Spine, 12.04 Affective Disorders (Depression), therefore, vocational factors will be considered to determine claimant's residual functional capacity to do relevant work.

In the present case, Claimant has been diagnosed with migraine headaches, nausea and vomiting, brain aneurysm, hypertension, diabetes mellitus and diabetic neuropathy, and neck pain post cervical fusion. Claimant has a number of symptoms and limitations, as cited above, as a result of these conditions. The consultative examination conducted noted that Claimant would be able to stand and walk for less than 2 hours in an 8-hour day, no limitations on sitting and indicated lifting of weight of less than 10 pounds. This

physician noted chronic neck pain. It was also noted that Claimant was not capable of pushing or pulling with either hand/arms or feet/legs. The examiner noted that the patient does not have any good vibratory sense in both lower extremities and lost two point discrimination of both lower extremities based upon the clinical examination and testing. A 3.1 cm aortic aneurysm was noted of 3.1cm which was evaluated as needing treatment based upon an aortic scan. Painful range of motion was noted with mild muscle spasm was also noted. Straight leg raising was positive in both legs bilaterally. In addition throughout the year [REDACTED] medical records established multiple hospital admissions for severe migraine with aneurysms and nausea and vomiting.

Claimant credibly testified to the following symptoms and abilities: The claimant could stand no more than an hour and sit a couple of hours, he could walk up to one half mile, and has numbness and tingling in both legs and feet, and numbness such that he cannot move his toes. He also has pain and numbness in both hands due to his diabetic condition. The Claimant also suffers from fatigue due to his diabetes. The Claimant indicated he could carry a gallon of milk but it would bother his hands. He suffers constantly from migraines for the last 4 to 5 years and has ongoing nausea. The Claimant also has lost 20 pounds since in the last year due to his homelessness and stress.

The fourth step of the analysis to be considered is whether the claimant has the ability to perform work previously performed by the claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the claimant from doing past relevant work. In the present case, Claimant's past employment was unskilled work involving landscaping and moving. In both jobs the Claimant regularly lifted items weighing between 75 and 100 pounds and stated he could no longer carry a weed whipping device and could not be on his feet all day as he was required to do by both of his jobs. The Claimant's past relevant work would be rated as unskilled. This Administrative Law Judge finds, based on the medical evidence and objective, physical, findings, that Claimant is not capable of the physical activities required to perform any such position and cannot perform past relevant work., and thus a Step 5 analysis is required 20 CFR 416.920(e).

In the final step of the analysis, the trier of fact must determine if the claimant's impairment(s) prevent the claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

1. residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and
3. the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite her limitations. 20 CFR 416.966.

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

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

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

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little; a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

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). At the time of hearing, the Claimant was 50 years old and, thus, considered to be closely approaching advanced age for MA-P purposes. The Claimant has a GED. 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 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). Individuals approaching advanced age (age 50-54) may be significantly limited in vocational adaptability if they are restricted to sedentary work. 20 CFR 416.963(d).

After a review of the entire record, including the Claimant's testimony and medical evidence presented, it is determined that Claimant's impairments have a major effect on his ability to perform basic work activities. Although marijuana use and abuse was noted in the medical records and Claimant testified to use several times weekly it is determined that drugs are not material to the causes of Claimant's disability. In light of the foregoing, it is found that the Claimant maintains the residual functional capacity for work activities on a regular and continuing basis to meet the physical and mental demands required to perform sedentary work as defined in 20 CFR 416.967(a). Based upon the foregoing review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.12, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

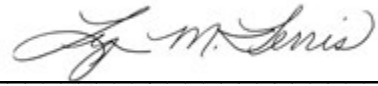
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of September 2010.

Accordingly, the Department's decision is hereby REVERSED

1. The Department is ORDERED to initiate a review of the application dated May 11, 2012 and the Claimant's retro application (April 2012) if not done previously, to determine Claimant's non-medical eligibility.

2. A review of this case shall be set for June 2014.



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

Date Signed: June 25, 2013

Date Mailed: June 25, 2013

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

LMF/cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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