

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012 76520
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: December 12, 2012
County: Oakland (04)

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 following Claimant's request for a hearing. After due notice, an in-person hearing was held on December 12, 2012, in Pontiac, Michigan. Participants on behalf of Claimant included the Claimant and [REDACTED], the Claimant's Authorized Hearing Representative ("AHR"). Participants on behalf of the Department of Human Services (Department) included [REDACTED], ES.

ISSUE

Whether the Department properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) 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. On April 13, 2012 Claimant applied for MA-P and retro MA-P (January 2012).
2. On May 25, 2012, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant's AHR the Notice of Case Action dated June 11, 2012 denying the Claimant's MA-P application. Exhibit 1
4. On September 4, 2012 Claimant's AHR submitted to the Department a timely hearing request.

5. On October 19, 2012 the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on December 19, 2012 accepting new evidence submitted on the Claimant's behalf at the hearing and additional evidence to be obtained by the Claimant's AHR.
7. The new evidence was provided to the State Hearing Review Team (SHRT) on February 15, 2012 and the SHRT denied disability on April 9, 2013.
8. Claimant at the time of the hearing was [REDACTED] years old with a birth date of [REDACTED]. Claimant's height was 6'0" and weighted 210 pounds.
9. Claimant completed high school.
10. Claimant has employment experience ([REDACTED]) as a cook, whose responsibilities included food prep, ordering food supplies, working the cash register, cooking, cleaning, serving at banquets. In this job the Claimant was required to carry trays weighing between 25-30 pounds. The Claimant also was a dishwasher requiring all day standing and frequent lifting and carrying CO² tanks and boxes of soft drinks weighing between 20 to 30 pounds. The Claimant also worked in his own business detailing cars requiring him to stoop and crouch and use a buffer and apply wax by hand.
11. Claimant alleges physical disabling impairments due to continual dizziness and vertigo, hypertension, high cholesterol, angina, high blood pressure, torn rotator cuff, degenerative disc disease of the cervical spine and chronic pain.
12. Claimant has alleged mental disabling impairments due to anxiety.
13. Claimant's impairments have lasted or are expected to last for or 12 months' duration 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).

The Claimant alleges physical disabling impairments due to continual dizziness and vertigo, hypertension, high cholesterol, angina, high blood pressure, torn rotator cuff, degenerative disc disease of the cervical spine and chronic pain. The Claimant alleges

mental disabling impairments due to anxiety. A summary of the claimant's medical evidence presented at the hearing and the new evidence presented follows.

On [REDACTED] a medical need evaluation and a Medical Examination Report was completed by Claimant's internal medicine treating physician. The diagnosis was hypertension, cholesterol, angina, anxiety, high blood pressure and degenerative disc disease of the cervical spine. The examination indicated pain in lumbar spine region and left shoulder. The report also referenced the progress notes of Claimant's orthopedic doctor. The neurological evaluation noted internal tremors, with painful episodes. The examiner imposed the following limitations, the Claimant could lift less than 10 pounds frequently and no more than 10 pounds occasionally. The Claimant could stand and/or walk less than 2 hours in an 8-hour work day and sit less than 6 hours in an 8-hour work day. The Claimant was also restricted from reaching, pushing or pulling with either hand/arm. The examiner noted the claimant's condition was stable and that the limitations were expected to last more than 90 days. The limitations were based upon attached progress notes by the Claimant's treating orthopedic physician which were also part of the medical evidence reviewed. The referenced notes dated [REDACTED] note impressions of 20 year history of chronic neck pain. Experiences tremors and muscle tension. The doctor recommended a referral to a support group for chronic pain. The orthopedic doctor has recommended that Claimant have surgery on his neck. The Claimant was seen by this doctor on [REDACTED] and the impression was torn rotator cuff left shoulder, left cervical radiculopathy, degenerative disc disease questioned for lumbar spine and hips.

On [REDACTED] the Claimant was diagnosed with severe degenerative disc disease at C4-C7 on left and a recommendation of spine surgery was made. These recommendations were also based on the [REDACTED] MRI.

The Claimant was admitted to the hospital for a one day stay on [REDACTED] with complaints of dizziness, vertigo, hypertension, hyperlipidemia and history of anxiety and chest pain. A myocardial perfusion imaging SPECT stress test was performed. The results of the test indicated that the Claimant had no evidence of ischemia or infarction. The cardiac wall motion was normal and the left ventricular ejection fraction is over 75% with left ventricle normal in size. Laboratory testing indicated a mildly increased risk of coronary artery disease due to mildly elevated cholesterol/hdl ratios.

An MRI of the cervical spine was obtained on [REDACTED] noting degenerative changes at C5 through C7, most pronounced at C6. Moderate anterior C5-6 and C6-7. Paraspinal soft tissues and musculature appear unremarkable. The cervical cord maintains normal signal. At C2-C3 no central canal or neural foraminal narrowing. At C3-4 mild uncovertebral facet hypertrophy with mild right sided neural foraminal narrowing. C4 – moderate central/left neural foraminal disc osteophyte encroaching upon and producing mild flattening of the left hemi cord. There is mild relative central canal narrowing on the left. Neural foraminal narrowing is moderate on the left at this level. Mild uncovertebral with moderate facet hypertrophy bilaterally. Mild right sided foraminal narrowing. C5–C6 moderate central left neural foraminal uncovertebral

hypertrophy with disc osteophyte. This produces encroachment upon the left hemicord with mild flattening and mild relative central canal narrowing. Neural foraminal narrowing is moderate to severe on the left. Facet hypertrophy is mild to moderate with mild right sided neural foraminal narrowing.

Here, Claimant has satisfied requirements as set forth in steps one and two, as Claimant was not substantially gainfully employed at the time of the hearing and his impairments have met the Step 2 severity requirements. In addition, the Claimant's impairments have been examined in light of the listings and after a review of the evidence the Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Listing 12.06 Anxiety Related Disorders was examined and it is found that there was no medical evidence presented that would support the listing. The Claimant's testimony of his symptoms alone is insufficient and it is noted that the Claimant has not undergone any treatment for his anxiety. Listing 1.02, Major Dysfunction of Joints due to any cause was examined due to rotator cuff tear and Listing 1.04 Disorders of the Spine was considered in light of the claimant's cervical degenerative disc disease but the required nerve root impingement was not demonstrated and it is found that neither listing was met. Listing 4.06 Symptomatic Congenital Heart Disease, was considered but the Claimant's objective testing did not demonstrate that it met the ejection fraction of 30%, and/or the enlarged left ventricular wall thickening requirements, all contained in Section A, subparagraphs 1 and 2 of the listing. 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 continual dizziness and vertigo, hypertension, high cholesterol, angina, high blood pressure, torn rotator cuff, degenerative disc disease of the cervical spine and chronic pain. Claimant has a number of symptoms and limitations, as cited above, as a result of these conditions. Claimant's treating physician noted that Claimant would be able to stand and walk for less than 2 hours in an 8-hour day, was limited to lifting less than 10 pounds frequently, and was noted as unable to reach or push and pull with both hands.

Claimant credibly testified to the following symptoms and abilities: the Claimant could not walk more than one block, he could stand for 5 or 10 minutes, and could sit for 30 minutes. The Claimant testified he could not squat, due to knee pain, and gets dizzy bending forward at the waist. The Claimant indicated that his left hand occasionally gets numb due to neck pain.

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 as a cook whose responsibilities included food prep, ordering food supplies, working the cash register, cooking, cleaning, serving at banquets (██████████). In this job the Claimant was required to carry trays weighing between 25-30 pounds. The Claimant also was a dishwasher requiring standing and frequent lifting and carrying, of CO² tanks

and boxes of soft drinks. The Claimant also worked in his own business detailing cars requiring him to stoop and crouch and use a buffer and apply wax by hand. The Claimant's prior work would be categorized as semi-skilled and unskilled light to medium work due to the varying weights of the carrying food and other items while serving food, preparing food and carrying food supplies. The Claimant's testimony as regards why he could no longer perform either position due to his inability to lift only 10 pound infrequently, his inability to stand or hold a buffer and apply car wax by hand was evaluated and was found to be credible. The standing restrictions imposed by his doctor are deemed to be supported by the medical evidence. This Administrative Law Judge finds, based on the medical evidence and objective, physical limitations testified by the Claimant and confirmed by his treating doctor's assessment and progress notes for his cervical degenerative disc disease and imposition of limitations, 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 47 years old and, thus, considered to be a younger individual for MA-P purposes. The Claimant has a high school education and has been restricted from pushing and pulling with both arms and hands due to his cervical disease. 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).

The evaluations and medical opinions 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. 20 CFR § 404.1527(d)(2). Deference was given by the undersigned to objective medical testing and clinical observations of the Claimant's treating physicians. After a review of the entire record, including the Claimant's testimony and medical evidence presented, and the objective medical evidence provided by the Claimant's treating internal medicine

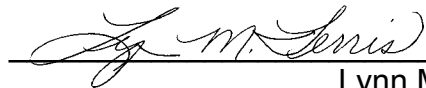
physician who places the Claimant at less than sedentary, the recommendation by his orthopedic treating physician that cervical surgery be performed, as well as the MRI results it is determined that the Claimant's restrictions place him at the less than sedentary activity level. The total impact caused by the physical impairment suffered by the Claimant must be considered. In doing so, it is found that the combination of 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.

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 April 13, 2012 and applicable retro period (January 2012) if not done previously, to determine Claimant's non-medical eligibility.
2. A review of this case shall be set for May 2014.


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

Date Signed: May 1, 2013

Date Mailed: May 1, 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
Re consideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

LMF/cl

cc:

