

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2012 25833  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: March 19, 2012  
DHS County: Wayne County (82)

**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 March 19, 2012. The Claimant appeared and testified. [REDACTED] 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::

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 on November 2, 2011
2. On November 28, , 2011, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp.1-2 )
3. The Department notified the Claimant of the MRT determination on December 5, 2011.

4. On January 12, 2012, the Department received the Claimant's timely written request for hearing.
5. On February 17, 2012, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 4)
6. An Interim Order was issued and new evidence was submitted to the SHRT on July 26, 2012.
7. On August 30, 2012 the State Hearing Review Team found the Claimant not disabled. (Exhibit 5)
8. The Claimant alleged physical disabling impairments due to chronic congestive heart failure, diabetes, swollen ankles, kidney disease, obesity, chronic obstructive pulmonary disease ("COPD"), high blood pressure.
9. The Claimant has not alleged any mental disabling impairment(s).
10. At the time of hearing, the Claimant was 48 years old with a December 28, 1963 birth date; was 6'2" in height; and weighed 286 pounds.
11. The Claimant attended school through the 12<sup>th</sup> grade, but did not graduate. The Claimant's employment history consists of working for temporary services in a variety of factory work (lifting up to 30 to 40 pounds), car delivery driver, mattress factory upholsterer, food service prep cook, server and cafeteria coordinator (lifting between 10 to 15 pounds).
12. The Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

### **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).

In this case the medical evidence presented chronicles frequent hospitalizations starting in 2009 and continuing in February 2012, and ongoing.

April 9, 2009: (4 days) Microcytic anemia, new onset congestive heart failure with diastolic dysfunction, lymphadenopathy, acute renal failure, diabetes, hypertension, and COPD.

██████████ (13 days) Upper gastrointestinal bleed and acute exacerbation of congestive heart failure.

██████████ (12 days) Severe chest pains, respiratory distress.

██████████ (4 days) Congestive heart failure diastolic dysfunction, COPD and secondary diagnosis Ventricular tachycardia, hypertension, diabetes mellitus, chronic kidney disease stage III, chest pain.

██████████ 11 days) Epistaxis, due to aspirin and hypertensive emergency with acute congestive heart failure diastolic, COPD exacerbation, a typical chest pain, intermittent hematuria and noted obesity.

██████████ (7 days) Chest pain likely secondary to right lower lobe pneumonia, acute exacerbation of diastolic congestive heart failure, acute COPD, GI bleed,

abdominal pain. Hypertension, diabetes mellitus. Mild degenerative disease of the mitral and aortic valve leaflets with moderate to severe mitral regurgitation.

██████████ (1 day) Shortness of breath and significantly elevated blood pressure and diabetes secondary due to lack of medication.

The Claimant also credibly testified to another admission 2 weeks prior to the hearing due to chest pains, COPD; and had another 3 day admission.

A consultative examination was conducted on ██████████ which concluded that the Claimant suffers with: hypertension, mild obesity, impaired vision, diabetes mellitus, insulin dependent, not well controlled, history of shortness of breath and possible COPD, patient is on inhalers, history of chronic heart failure chest x-ray recommended, chronic end stage renal disease and noted musculoskeletal pain affecting the neck and left shoulder. The report concludes that the patient cannot do any jobs involving lifting, pushing pulling, climbing or heavy lifting and was restricted to lifting less than 10 pounds. Exhibit 4.

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 chronic congestive heart failure, diabetes, swollen ankles, kidney disease, obesity, chronic obstructive pulmonary disease ("COPD"), high blood pressure.

Listings regarding 1.00 Musculoskeletal System. 4.00 Cardiovascular System, 9.00 Endocrine Disorders (diabetes) 3.00 Respiratory System and 7.00 Hematological Disorders (kidney disease) were considered and reviewed based upon the objective medical evidence. It was determined that none of the listings were met and thus the Claimant is found not disabled at Step 3 and thus analysis of disability under Step 4 is required.

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 working for temporary services in a variety of factory work (lifting up to 30 to 40 pounds), car delivery driver, mattress factory upholsterer, food service prep cook, server and cafeteria coordinator. The Claimant's last position as a cafeteria coordinator and food service prep cook required preparation of 2 meals per day in a public school setting and required standing much of the day preparing food, lifting boxes of food weighing 10 15 pounds, and walking significant distances. 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 light and medium work.

The Claimant credibly testified that he is able to walk less than half a block, spends most of his day in bed, cannot climb or descend stairs unless assisted, uses a cane or a walker to walk, can carry a plate and fork, and has difficulty walking due to extreme swelling of his feet and ankles. Lastly the Claimant credibly testified that he can stand for about 2 or 3 minutes only, due to dizziness caused by his medications. Further, independent consultative Medical Examination Report confirmed the diagnosis previously documented by the Claimant's numerous hospitalizations and concluded that Claimant cannot do any jobs involving lifting pushing pulling climbing or heavy lifting and restricted the Claimant to lifting less than 10 pounds. The report further noted that the Claimant's condition is stable but deteriorating. (Exhibit 5). 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 48 years old and, thus, is considered to be younger individual for MA purposes. The Claimant attended school through the 12<sup>th</sup> grade but did not graduate from high school. 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).

In this case the evidence reveals that the Claimant suffers physical disabling impairments due to chronic congestive heart failure, diabetes, swollen ankles, kidney disease, obesity, chronic obstructive pulmonary disease ("COPD"), and high blood pressure. He uses a cane to ambulate and has been given ongoing serious functional limitation restrictions. A further consideration must also be given to obesity when determining the Claimant's residual functional capacity.

On August 24, 1999, the Social Security Administration deleted Listing 9.09 regarding obesity from the Listing of Impairments. SSR 02-1p In conjunction, the final rule in the Federal Register deleting 9.09, added paragraphs to the prefaces of the musculoskeletal, respiratory, and cardiovascular body system listings that provide guidance regarding the potential effects obesity has in causing or contributing to impairments in those body systems. *Id.* Obesity is a medically determinable impairment that is often associated with disturbance of the musculoskeletal system, and disturbance of this system can be a major cause of disability in individuals with obesity. 1.00Q The combined effects of obesity with musculoskeletal impairments may be greater than the effects of each of the impairments considered separately. *Id.* Therefore, when determining whether an individual with obesity has a listing-level impairment or combination of impairments (and when assessing a claim at other steps

of the sequential evaluation process, including when assessing an individual's residual functional capacity) any additional and cumulative effects of obesity is considered. *Id.* The National Institute of Health (NIH) established medical criteria for the diagnosis of obesity in its *Clinical Guidelines on the Identification, Evaluation, and Treatment of Overweight and Obesity in Adults* (NIH Publication No. 98-4083, September 1998). SSR 02-1p


In this case the evidence and objective medical findings reveal that the claimant suffers from physical disabling impairments due to chronic congestive heart failure, diabetes, swollen ankles, kidney disease, obesity, chronic obstructive pulmonary disease ("COPD") and high blood pressure with numerous and ongoing hospitalizations. The objective medical evidence, and the Claimant's obesity, place the Claimant at the less than sedentary activity level. The total impact caused by the combination of 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 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 application dated November 2, 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 September 2013, in accordance with Department policy.

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

2012-25833/LMF

Date Signed: 9/21/2012

Date Mailed: 9/12/2012

**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

LMF/hw

cc:

