

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012 50962
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: July 16, 2012
DHS County: Wayne County (15)

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 July 16, 2012. The Claimant appeared and testified. [REDACTED], Medical Contact Worker 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 and the State Disability Assistance 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 March 1, 2012.
2. On April 24, 2012, 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 April 26, 2012.
4. On May 1, 2012, the Department received the Claimant's timely written request for hearing.

5. On June 14, 2012, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued on July 17, 2012 to accept new medical evidence. The new evidence was submitted to the State Hearing Review Team on July 25, 2012. (Exhibit 3)
7. On August 24, 2012, the State Hearing Review Team found the Claimant not disabled. (Exhibit 4)
8. The Claimant alleged physical disabling impairments due no vision in his left eye with diabetic retinopathy with blurred vision in his right eye. The Claimant has diabetes and a history of kidney disease and hypertension.
9. The Claimant has not alleged any mental disabling impairments.
10. At the time of hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth date. Claimant is 5’8” in height; and weighed 175 pounds.
11. The Claimant has a high school education and an employment history working in landscaping, snow removal and lawn cutting, and residential home improvement and renovation.

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 the present case, the Claimant alleges disability due severe vision loss in his left eye (20/400) and blurred vision in his right eye (20/40) with a diagnosis of diabetic retinopathy. The Claimant also alleges diabetes, kidney disease and hypertension.

The Claimant has received laser treatments on both his eyes by his treating physician. On [REDACTED], the Claimant was seen by his treating physician and given laser treatment on his left eye. On [REDACTED], the Claimant again received laser treatment on his right eye. Operative notes conclude his vision was 20/40 in his right eye and 20/400 in his left eye. (Exhibit 1 pp 1-12)

The Claimant's treating physician for internal medicine completed a medical examination report that noted a diagnosis of chronic kidney disease, hypertension and diabetes mellitus. The exam found the Claimant's condition to be stable and that the Claimant could meet his needs in his home. (Exhibit 1 pp 14, 15)

An Eye Examination Report (consultative) was completed on [REDACTED] and found a diagnosis of proliferative diabetic retinopathy. The report noted no restrictions or limitations associated with the ophthalmological condition with 20/25 in right eye and 20/400 in left. (Exhibit 1 pp 16 and 17)

On [REDACTED] a consultative exam was conducted and found Claimant's vision to be 20/25 right eye and hand motions only on left visual field. The assessment was proliferative diabetic retinopathy and that prognosis for left eye was poor and right eye prognosis good.

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 blindness in the left eye and blurred vision in the right eye, diabetic retinopathy and diabetes, kidney disease and hypertension.

Listing 2.02 A2 (loss of visual Acuity) 2.03(contraction of the visual fields in the better eye) and 2.04 (Loss of visual efficiency) (Special Senses and Speech), and 9.00 Endocrine disorders were considered in light of the objective medical evidence.

Statutory blindness is blindness as defined in sections 216(i)(1) and 1614(a)(2) of the Social Security Act (the Act). The Act defines blindness as visual acuity of 20/200 or less in the better eye with the use of a correcting lens. The best-corrected visual acuity for the better eye which in the Claimant's case is his right eye was 20/40. The claimant's visual impairment, although serious does not meet the listing. Additionally the Claimant loss of visual efficiency was also evaluated and requires that visual efficiency of the better eye of 20 percent or less after best correction. (see 2.00A7c) In this case using Table 1, the percent visual acuity efficiency for the Claimant with vision of 20/40 in his right eye is 85%, and thus he does not meet 2.04. Thus ultimately, it is found that the Claimant's visual impairment does not meet the intent and severity requirement of a listed impairment.

A review of the listing for 9.00 Endocrine Disorders requires that the diabetes mellitus must have effects that meet or medically equal the criteria of any listing in other body systems. In this case the medical evidence presented and discussed above regarding visual impairments did not meet a listing, and thus the Claimant does not meet the intent and severity requirement of a 9.00.

The fourth step in analyzing a disability claim requires an assessment of the claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s) and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) 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 general landscaping including snow removal, lawn cutting and trimming, as well as home improvement and renovation work, including installing cabinetry and flooring. The Claimant credibly testified that he injured himself doing renovation work due to his lack of vision in his left eye (which made drilling dangerous). Claimant performed this work until around 2009 and stopped working due to his vision. 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.

Although the Claimant testified that he is able to walk about one half mile; lift/carry up to 45 pounds and can sit for one hour, the objective medical evidence regarding the Claimant's vision loss concludes that the Claimant has poor depth perception. 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 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 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to

perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

In this case the evidence reveals that the Claimant suffers from loss of vision in his left eye and some blurring in his right eye, diabetes and hypertension. All eye examinations conclude the vision in the right eye is corrected to 20/40 and prognosis for the right eye is good. In light of the foregoing, is found that the Claimant maintains the residual functional capacity for work activities on a regular and continuing basis includes the ability to meet the physical and mental demands required to perform sedentary work as defined in 20 CFR 416.967(a). After review of the entire record and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.21, it is found that the Claimant is not disabled for purposes of the MA-P program at Step 5.

In this case, the Claimant is found not disabled for purposes of the MA-P program.

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.

In this case, the Claimant is found not disabled for purposes of the MA-P program; therefore, he is found not disabled for purposes of SDA benefit program.

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:

2012-50962/LMF

The Department's determination is AFFIRMED.



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

Date Signed: September 13, 2012

Date Mailed: September 13, 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

2012-50962/LMF

cc:

