

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012 52044
Issue No.: 2009
Case No.: 115479324
Hearing Date: [REDACTED]
DHS 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 upon the Claimant's request for a hearing. After due notice, an in-person hearing was held in Pontiac, Michigan, on August 6, 2012. The Claimant appeared and testified. [REDACTED] the Claimant's authorized Hearing Representative, also appeared. [REDACTED] ES, appeared on behalf of the Department of Human Services ("Department").

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") benefit program?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Claimant submitted an application for public assistance seeking MA-P benefits and retro benefits (November 2011) on February 29, 2012.
2. On March 27, 2012, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp.)
3. The Department notified the Claimant of the MRT determination on March 30, 2012.
4. On April 19, 2012, the Department received the Claimant's timely written request for hearing.

5. On June 27, 2012 the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued on August 10, 2012 to obtain new medical evidence and updated medical examinations. The new evidence was submitted to the State Hearing Review Team on November 29, 2012.
7. On December 21, 2012 the State Hearing Review Team found the Claimant not disabled.
8. The Claimant alleges physical disabling impairments of low back pain with lumbar radiculopathy, sciatica, hypertension, hypercholesterolemia and cardiomyopathy, arthritis and gout, left knee pain and swelling of lower extremities, left ventricular hypokinesia with catheterization with ejection fraction of 25 -30% and obesity.
9. The Claimant has not alleged any mental disabling impairment.
10. At the time of hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth date. Claimant is 6’1” in height; and weighed 338 pounds.
11. The Claimant has a high school education and one year of college. The Claimant has an employment history working as a cable TV installer and construction work as a concrete finisher and sidewalk repair and industrial jobs packing parts and making plastic bags and driving for a cable TV company.
12. The Claimant’s impairments have lasted or are expected to last 12 months in duration.

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”).

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claiming a physical or mental

disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

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

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

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

disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

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

The severity of the claimant's alleged impairment(s) is considered under Step 2. The claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting.

Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and*

Human Services, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

The Claimant alleges physical disabling impairments of low back pain with lumbar radiculopathy, sciatica, hypertension, hypercholesterolemia and cardiomyopathy, arthritis and gout, left knee pain and swelling of lower extremities, left ventricular hypokinesia with catheterization with ejection fraction of 25 -30% and obesity.

The medical evidence produced at the hearing and new medical evidence follows.

In [REDACTED] the Claimant reported to the emergency room with chest pain which had worsened over the last year. The notes indicate that the Claimant drinks excessively. The Claimant had a cardiac workup. The Claimant was discharged the next day with diagnosis of acute chest pain with follow up with doctor. The testing noted that mildly elevated cholesterol/HDL ratio points to a slightly increased risk of coronary artery disease. On this admission a left heart catheterization and selective coronary angiogram was performed. Arteriotomy was noted in the common femoral artery. The left coronary angiogram showed normal left main coronary artery. No significant stenosis or obstructive lesion noted in the left anterior descending artery or the circumflex artery. The right coronary angiogram showed normal right coronary angiogram. Left ventriculogram shows a moderately severe global left ventricular hypokinesia, with estimated ejection fraction in the range of 25%-30%. The catheterization conclusion was normal coronary angiogram and cardiomyopathy with estimated ejection fraction of 25%-30%. The diagnosis was global hypokinesia, ejection fraction of 25%-30% and clean coronaries. The recommendation was medical management.

The Claimant presented to the emergency room on [REDACTED] with complaints of chest pain, left knee pain and back pain. The claimant was not admitted but was discharged home after examination with non steroidal anti inflammatory medication and a referral for knee pain diagnosed as gouty arthritis with noted some range of motion limitation (active). The electrocardiogram showed no acute injury pattern.

A heart catheterization was performed which showed to be negative with an ejection fraction of 25%-30%. The Claimant was discharged with instructions to abstain from alcohol completely with reevaluation within 90 days. The patient had a newly diagnosed cardiomyopathy with no significant coronary disease. The report concludes that alcohol consumption contributed to the cardiomyopathy. Exhibit 1 pp 17

On [REDACTED] a consultative medical examination was conducted. The examiner's assessment noted lumbar radiculopathy, questionable sciatica, hypertension, hypercholesterolemia, and cardiomyopathy. The examiner based the finding of lumbar radiculopathy on positive straight leg raise bilaterally. Patient also has shooting pain down the back of legs consistent with sciatica. At this time patient will benefit from neurosurgery consult as well as outpatient physical therapy and pain control.

A DHS 49 was also completed as part of the exam which noted the following limitations: frequently lift less than 10 pounds and occasionally 10 pounds, Claimant can stand or walk less than 2 hours in an 8 hour workday, no pushing/pulling or fine manipulation with either hand and no operation of foot controls with either foot. The impression noted that Claimant was deteriorating.

Another medical examination report was completed on [REDACTED]. The examiner noted back pain and left knee pain with ankle swelling. Diagnosis was lumbar radiculopathy, left knee arthritis, gout, GERD and hypertension. The examiner noted that the Claimant is obese and noted lumbar tenderness and knee crepitus, and ankle swelling. The examiner imposed the following limitations, occasionally lifting less than 10 pounds, the claimant could stand and or walk at least 2 hours in an 8 hour workday, sit about 6 hours in an 8 hour work day, and noted no restrictions with regard to use of his hands, arms or operating foot controls. A medical needs form was also completed which was inconsistent with the DHS 49 and indicated limitations that the Claimant could lift not more than 25 pounds.

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 alleges physical disabling impairments of low back pain with lumbar radiculopathy, sciatica, hypertension, hypercholesterolemia and cardiomyopathy, arthritis and gout, left knee pain and swelling of lower extremities, left ventricular hypokinesia with catheterization with ejection fraction of 25 -30% and obesity.

Listing 1.04 Disorders of the spine was reviewed and it was found that the Claimant did not meet the listing.

Listing 4.02 Chronic Heart Failure was also considered but the requirement of 3 acute incidents of chronic heart failure or a finding by a physician that the undertaking of an exercise test would present a severe risk for the Claimant were not demonstrated by the medical evidence. Therefore the next step in the analysis must be undertaken.

The fourth step in analyzing a disability claim requires an assessment of the claimant's past relevant work 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 industrial work making plastic bags and packaging, requiring standing 12 hours daily and lifting 50-75 pounds. This work would be considered unskilled medium work. The claimant also spent 14 years as an installer of cable television systems. This job required training and required lifting of ladders weighing 28 pounds and cable weighing 50 pounds. This work would be characterized as medium semi-skilled work. Both of these jobs required standing most of the day.

In light of the Claimant's testimony and records, and in consideration of the Occupational Code, the Claimant's prior work is classified as semi-skilled, medium work.

The Claimant credibly testified that he is not able to walk any significant distance (2.5 blocks) due to pain in the back of his legs and shortness of breath. The Claimant can stand for about 15 minutes and does not grocery shop. Although he can drive he drives only short distances due to fatigue and having to stop. The Claimant has constant back pain and with medications pain level is a 6.5 -7 . Claimant further credibly testified that his hands swell and he experiences numbness and also has lower body swelling in his ankles. He can bend at waist but has difficulty rising back up and is able to shower and dress himself. The objective medical evidence regarding the Claimant does significantly limit the Claimant. Two consultative examinations described earlier in this decision impose significant restrictions on the Claimant's abilities.

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 II*, 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 complains of back pain and is diagnosed in two consultative examinations with lumbar radiculopathy with positive straight leg raising. The Claimant has congestive heart failure and on last treatment a catheterization was performed and the final result was global hypokinesia with ejection

fraction of 25%-30%. Restrictions were placed upon the Claimant after both consultative exams limiting the Claimant to lifting of less than 10 pounds frequently, no pushing or pulling with both hands, and no operation foot/leg controls. The examiner noted that the Claimant was deteriorating.

In this case the evidence and objective findings reveal that the claimant suffers from physical disabling impairments due to low back pain with lumbar radiculopathy, sciatica, hypertension, hypercholesterolemia and cardiomyopathy, arthritis and gout, left knee pain and swelling of lower extremities, left ventricular hypokinesia with catheterization with ejection fraction of 25 -30% and obesity.

The objective medical evidence provided by both the consultative examinations and objective medical evidence resulting from heart catheterization place the Claimant at the less than sedentary activity level. The total impact caused by the physical impairment suffered by the Claimant including gout, lumbar radiculopathy, chronic heart disease and obesity, Claimant weighed 338 pounds at the time of the hearing, 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, Retro MA-P and SDA application dated February 29, 2012 and retro application (November 2012) 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 January 2014 in accordance with Department policy.



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

Date Signed: January 24, 2013

Date Mailed: January 24, 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

2012-52044/LMF

cc:

