

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012 61607
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: October 1, 2012
County: Oakland (02)

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 October 1, 2012 from Madison Heights, Michigan. Participants on behalf of Claimant included the Claimant and [REDACTED] the Claimant's Authorized Hearing Representative ("AHR"). [REDACTED], also appeared as a witness. 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 March 20, 2012, Claimant applied for MA-P and retro MA-P.
2. On April 20, 2012, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant's AHR the Notice of Case Action dated April 20, 2012 denying the Claimant's MA-P application. Exhibit 1

4. On June 17, 2012 Claimant's AHR submitted to the Department a timely hearing request.
5. On August 17, 2012 the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on October 10, 2012 accepting new evidence submitted on the Claimant's behalf at the hearing and additional evidence to be obtained by the Department.
7. The new evidence was provided to the State Hearing Review Team (SHRT) on February 25, 2013 and the SHRT denied disability on April 5, 2013.
8. Claimant, at the time of the hearing, was [REDACTED] years old with a birth date of [REDACTED]. The Claimant is now [REDACTED]. Claimant's height was 5'7" and weighed 174 pounds.
9. Claimant completed high school and was in special education due to learning disabilities and an IQ in the low range.
10. Claimant has employment experience ([REDACTED]) as a grocery bagger for a supermarket. Claimant held this position for 3 years.
11. Claimant alleges physical disabling impairments due to congenital heart disease, congenital cardiac defect, aortic valve disease, ventricular septal disease, (hole in heart), aortic aneurysm and chest pain, and scoliosis with back pain.
12. Claimant alleges mental disabling impairments due to learning disability with low range IQ.
13. Claimant's impairments have lasted or are expected to last for 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 congenital heart disease, congenital cardiac defect, aortic valve disease, ventricular septal disease, (hole in heart), aortic aneurysm and chest pain, and scoliosis with back pain. The Claimant

alleges mental disabling impairments due to learning disability with low range IQ. A summary of the Claimant's medical evidence presented at the hearing and the new evidence presented follows.

The Claimant was seen by a Chiropractor on [REDACTED]. The chiropractor's report diagnosis indicated myalgias and myositis unspecified, pain in thoracic spine. The report did not offer an opinion regarding the Claimant's ability to work or the degree of limitation; however, did note that based upon treatment plans and goals the Claimant was to become competent in stretching to correct muscle imbalances.

The Claimant was admitted to the hospital on [REDACTED] for a two day stay pursuant to chest pain with increased frequency over the past two weeks. At the time of the admission, the Claimant had not seen a cardiologist for several years. The report noted an echocardiogram in [REDACTED] with an ejection fraction of 55-60%, a small muscular midseptum ventricular septal defect with left to right shunting observed. Right ventricular systolic pressure was noted to be 28.1 with no pulmonary hypertension. The ascending aortic aneurysm was noted measuring 4.7 centimeters. The echocardiogram also noted mild aortic insufficiency, aortic valve peak gradient at 21 mmHg and mean gradient of 9.8mmHg consistent with mild stenosis. On examination the examiner noted positive S1, very prominent S2. S2 intensity is auscultated with radiation to the carotids bilaterally. No carotid bruit. There is a systolic 2/6 ejection murmur. The EKG was unchanged from an EKG in [REDACTED]. There was no evidence of heart failure. There was mild cardiomegaly and stable appearance from prior exam. As regards the chest pain, the report noted based upon the history, initial lab studies, EKG and imaging studies, they do not suggest a chest pain of coronary etiology or of pericarditis. Pain may be related to anxiety but no treatment of the anxiety was deemed necessary.

On [REDACTED] a cardiac echogram revealed the left ventricle ejection fraction of 60-65%. Doppler findings noted mild to moderate aortic insufficiency, no pericardial effusion, mild aortic valve insufficiency, mild tricuspid insufficiency, mild to moderate aortic insufficiency, mild mitral insufficiency, mild aortic stenosis and small ventricular septal defect.

The final report for the [REDACTED] admission indicated the following. During the stay there were no cardiac events and patient was completely asymptomatic and experienced no chest discomfort or chest pain. After reviewing the patient history, and all the testing a cardiothoracic surgeon evaluated the Claimant and discussed with family that he would be willing to perform corrective surgery for the aneurysm and aortic valve for [REDACTED]. The Claimant requested that his grandmother pick him up from the hospital as he was terrified and very anxious about the transesophageal echocardiography scheduled for the next day. The Claimant left the hospital against medical advice.

On [REDACTED] the Claimant, after leaving the hospital against medical advice, presented again with chest pains. The Claimant was scheduled for surgery for repair or replacement of his ascending aortic aneurysm and repair or replacement of his aortic

valve and possible repair of his VSD. The surgery was postponed to follow up with further testing, including a transesophageal echocardiography. The final report advised that Claimant was to follow up with the cardio surgeon and was deemed stable to be discharged with follow up.

On [REDACTED] a consultative psychiatric evaluation was performed by the hospital. The hospital evaluator determined that a diagnosis of adjustment disorder to explain the signing of a form against medical advice. The Claimant's reasoning and judgment were deemed adequate, however cognitive and likely emotional limitations were noted and his mother is his guardian. The evaluation concluded that there was no evidence of any significant psychiatric issues in this Claimant. The GAF score was 40.

On [REDACTED] a treating cardiologist completed an Examination Report. The diagnosis was congenital ventricular septal disease, aortic valve disease and chest pain. The examiner noted the Claimant's condition as stable, indicated that Claimant's limitations were expected to last more than 90 days, and imposed the following limitations. The Claimant was limited to lifting less than 10 pounds frequently and occasionally lifting 10, 20 and 25 pounds, although the report noted not often for 20 and 25 pounds. The Claimant was limited to stand and or walk about 6 hours in an 8-hour work day, with the note non-consecutive and as a total. No limitations on sitting were noted. The Claimant's use of his hands and arms were limited indicating no reaching or pushing or pulling with either hand. A note was included indicating that patient was able to work and do light aerobic activity without symptom, limited effects only but should avoid manual labor. Mental limitations with comprehension, sustained concentration were noted and the note that patient is mentally limited/slow was included.

On [REDACTED] a consultative examination was performed on behalf of the SSA. The examiner noted a grade III over XI systolic murmur. The impression was congenital aortic valvular stenosis, ventricular septal defect, thoracolumbar scoliosis, atypical chest pain. The conclusion was, patient's symptoms are mostly chest pain, which is atypical in character. He has no signs of congestive heart failure, there is no neck vein distention, heart murmur, gallop, pulmonary rales. Claimant also has some mild thoracolumbar scoliosis. The area has no paravertebral spasm or tenderness. Cervical movement is full, lumbar area also has full range of movement. Based upon the examination, limitations were imposed. The Claimant was evaluated as being able to frequently lift/carry up to 10 pounds and occasionally up to 20 pounds. The Claimant was evaluated as being able to sit 8 hours, stand 6 hours and walk 5 hours. The Claimant could use his hands or arms frequently 1/3 to 1/2 of the time. The examiner also indicated that Claimant could climb stairs and ramps frequently, 1/3 to 2/3 of time and climb ladders or scaffolds occasionally, up to 1/3 of the time.

In [REDACTED] the treating doctor referenced above indicated that the Claimant should not work. His case was discussed in front of a board of cardiologists and surgeons who feel that at this point in time surgery is probably not necessary but we expect that it will likely become necessary over the next year or two. The disease is

such that manual labor should not be carried out. He is able to walk and do light aerobic activity with only symptom limited effects.

The Claimant's school records that were submitted established that several tests results concluded that the Claimant's tested IQ was in the low range. An evaluation performed and found the Claimant's functioning in the borderline range of intelligence with a full scale IQ score of 77 on the Wisc III. His verbal IQ is 75 (border line) and performance IQ is 82 (low average). A report from his high school evaluation contained similar scores and noted achievement was between 2.7 and 7.6 grade levels, way below grade level.

Here, Claimant has satisfied requirements as set forth in steps one and two, as Claimant is not substantially gainfully employed and his impairments have met the Step 2 severity requirements. In addition, the Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CF R 416.926. Listings 4.01 Aneurysm of the Aorta or major Branches, Listing 4.06 Symptomatic Congenital Heart Disease, Listing 4.02 Chronic Heart Failure were reviewed in light of the medical evidence and were not met. Chronic Heart Failure 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. Listing 1.04, Disorders of the Spine was also considered but the required nerve root impingement was not demonstrated by the chiropractic evaluation which cannot sustain a listing. Additionally opinions of chiropractors are not considered an acceptable medical source for purposes of establishing a listing without other acceptable medical source evidence or objective testing. Listing 12.05 Mental Retardation was also considered in light of Claimant's medical evidence and IQ and it was determined that the Claimant's IQ and other limitations did not meet this 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 congenital heart disease (congenital cardiac defect, aortic valve disease, ventricular septal disease, hole in heart), aortic aneurysm with chest pain, scoliosis and learning disability with low range IQ. 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, was noted as unable to grasp or reach with both hands and based the evaluation of limitations on observation that the Claimant experiences shortness of breath upon exertion and has ongoing chest pains. The Claimant's treating cardiologist also advised in both evaluations that Claimant could not perform any sort of manual labor.

The Claimant also had two hospital admissions in [REDACTED] due to his congenital heart disease due to chest pain, which resulted in a preliminary opinion by the hospital treating doctor that heart repair surgery to fix the aortic aneurism was suggested.

Claimant credibly testified to the following symptoms and abilities: the Claimant could not walk more than half a mile without resting or stopping due to chest pain, he could stand for 15 minutes, and could sit for maybe 2 hours. The Claimant testified he could not squat, and gets chest pains on exertion which were rated by Claimant on a scale of 1–10 as a 9. At the time of the hearing the Claimant testified that he gets frequent heart pains four or five times per day. Claimant also gets chest pains when going up and down stairs. When attempting to climb stairs he must rest and stop due to shortness of breath.

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 grocery bagger standing most of the day and lifting bags of groceries into shopping carts. The Claimant quit his job when he could no longer perform the job due to chest pains and having to take too many breaks. The Claimant's prior work would be categorized as unskilled light work due to the varying weights of the grocery bags and items lifted. This Administrative Law Judge finds, based on the medical evidence and objective, physical limitations testified by the Claimant and confirmed by his treating cardiologist's assessment 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 25 years old and, thus, considered to be a younger individual for MA-P purposes. The Claimant has a high school education but has intellectual limitations with an IQ in the low range with noted learning disabilities and has been restricted from pushing and pulling with both arms and hands due to continuing chest pains. 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).

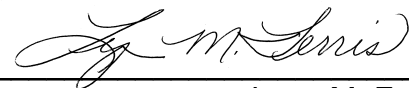
The evaluations and medical opinions of a “treating” physician is “controlling” if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record. 20 CFR § 404.1527(d)(2), Deference was given by the undersigned to objective medical testing and clinical observations of the Claimant’s treating physician. 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 cardiologist place the Claimant at the less than sedentary activity level. The total impact caused by the physical impairments suffered by the Claimant and his learning disability must be considered. In doing so, it is found that the combination of the Claimant’s physical impairments and intellectual limitations 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 March 20, 2013 and applicable retro period 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
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

LMF/cl

cc:

