

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012 68471
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: October 24, 2012
County: Wayne (18)

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 24, 2012 from Taylor, Michigan. Participants on behalf of Claimant included the Claimant and [REDACTED] the Claimant's Authorized Hearing Representative. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Medical Contact Worker.

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 February 24, 2012, Claimant applied for MA-P and retro MAP (December 2011).
2. On May 3, 2012 the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant the Notice of Case Action dated on May 3, 2012 denying the Claimant's MA-P and SDA application. Exhibit 1

4. On June 30, 2012 Claimant submitted to the Department a timely hearing request.
5. September 12, 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 26, 2012.
7. The new evidence as Ordered was sent to the State Hearing Review Team on December 21, 2012. On February 1, 2013 the State Hearing Review Team found the Claimant not disabled and denied Claimant's request.
8. At the time of the hearing the Claimant was [REDACTED]. The Claimant is now [REDACTED] years old with a birth date of [REDACTED]. The Claimant was 5'10" in height and weighed 151.
9. Claimant completed education through the 10th grade.
10. Claimant has employment experience (last worked [REDACTED] as a lawn care licensed lawn technician providing and applying various lawn products to lawns pulling a large hose. The Claimant also drove a delivery truck and delivered lawn products by truck.
11. Claimant's limitations have lasted for 12 months or more.
12. Claimant alleges physical disabling impairments due to hypertension, coronary artery disease with stent, chronic lumbar myositis, bilateral hip pain, bilateral ankle pain, hypothyroidism and visual field defect on right side.
13. The Claimant alleges mental disabling impairments due to anxiety.
14. Claimant has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping, pushing and pulling.

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 has alleged physical disabling impairments due to hypertension, coronary artery disease with stent, chronic lumbar myositis, bilateral hip pain, bilateral ankle pain, hypothyroidism and visual field defect on right side.

The Claimant alleges mental disabling impairments due to depression and anxiety.

A summary of the medical evidence follows.

An Eye Examination Report was completed on [REDACTED] the diagnosis was visual field defect and astigmatism. The report noted that the Claimant was to avoid hazards from the right side and other recommendations indicated Claimant should use glasses. The uncorrected distance acuity on both sides for distance is 20/100, near acuity is 20/100 at 14 inches. Distance acuity corrected is 20/20 on the left and right and 20/25 near acuity on both sides. The exam notes that horizontal field on right of 60 degrees and 77 degrees of horizontal field on left. The assessment notes no evidence of progressive ophthalmologic disease. The visual field defect is not likely to improve in the future and he is likely to maintain fairly good central vision.

A consultative examination and Medical Examination Report was prepared on [REDACTED]. The impression was hypertension, coronary artery disease with stent, chronic lumbar myositis, bilateral hip pain, bilateral ankle pain, hypothyroidism and anxiety. The examiner placed the following limitations on evaluation finding the Claimant could frequently lift less than 10 pounds, never 10 pounds, could stand and/or walk less than 2 hours in a 6 hour work day. The Claimant could use his hands and arms for simple grasping, reaching, pushing, pulling and fine manipulation and could not operate foot controls with either foot. Testing showed reduced range of motion in the lumbar spine. The examiner noted that the Claimant could do a range of activities but noted aches and pain in the joints. The exam noted low back pain with spasm and stiffness.

The Claimant was seen at the emergency room on [REDACTED] for chest pain with blood pressure of 215/140. The Claimant was released that day with no evidence of ischemia, the pain complained of [REDACTED] was back pain deemed to be mostly musculoskeletal.

On [REDACTED] the Claimant was admitted for a two day stay for acute myocardial infarction and underwent successful stenting. At that time peripheral vision loss was noted. Echocardiogram did show ejection fraction of 50% to 55%.

A consultative Mental Status Evaluation was conducted on [REDACTED]. The examiner noted that the Claimant was distant, withdrawn, vague and blunted with depressed mood. The Diagnosis was depressive disorder. GAF was 55, prognosis was fair to guarded. Ability to relate to co-workers and supervisors is moderately impaired. The mental ability to understand, remember and carry out tasks appears to be mildly impaired. It is likely the Claimant could handle more complex tasks. Difficulty in performing multiple step tasks is likely minimal. Claimant's mental ability to maintain attention, concentration, persistence, pace and effort is mildly impaired. Ability to withstand stress and pressure associated with day-to-day work activities is moderately impaired.

A radiological report dated [REDACTED] noted impression fixed perfusion abnormality mostly related to scarring from previous myocardial infarction, ejection fraction below normal, 45% with mild hypokinesia.

Here, Claimant has satisfied requirements as set forth in steps one, two and three of the sequential evaluation. However, Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Listing 1.04 Disorders of the Spine, 12.04 Affective Disorders (depression), 12.06 Anxiety related Disorders and 4.04 Ischemic Heart Disease were considered and were found not to be met. 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 physical impairments due to hypertension, coronary artery disease with stent, chronic lumbar myositis, bilateral hip pain, bilateral ankle pain and hypothyroidism. The Claimant also has mental impairments diagnosed as depression and anxiety.

Claimant has a number of symptoms and limitations, as cited above, as a result of these conditions. Claimant credibly testified to the following symptoms and abilities: pain in legs, hands and back, can stand 30 minutes, can walk on a bad day 1 block, on a good day several blocks due to blood pressure issues, cannot lift anything over 10 pounds but cannot carry it. Claimant also credibly testified that his ability to sleep is limited and that he is restless at night due to pain. Claimant can sit 30 minutes, the Claimant also becomes breathless climbing a few stairs making hard to breathe and fatiguing. Lastly, Claimant is tired a lot and fatigued and stays home most of the time. The Claimant described his depression as affecting his concentration, friendships and does not want to do anything and at times his personal hygiene is affected.

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 truck driver and delivery person for lawn care products delivering 50 to 80 pound bags of lawn products including fertilizer. He was also a certified lawn tech mixing tanks of chemicals with water and applying the mixture to lawns as large as 2 to 3 acres. This work required him to drag a hose behind him as he applied the product. Based upon the medical evidence and testimony of the Claimant, it is determined that the Claimant's past work was unskilled and consisted of medium to heavy work. Also considered in making this evaluation was the Claimant's visual field condition as medically diagnosed making him susceptible to hazard on the right side. The Claimant credibly testified that he no longer drives, in part due to accidents because of his limited field of vision. This Administrative Law Judge finds, based on the medical evidence summarized above and objective, physical, and psychological findings, 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 46 and is now [REDACTED] years old and, thus, considered to be considered a younger individual. The Claimant has the equivalent of an 10th grade education. 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 substantiate 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). Individuals approaching advanced age (age 50-54) may be significantly limited in vocational adaptability if they are restricted to sedentary work. 20 CFR 416.963(d).

After a review of the entire record, including the Claimant's testimony and medical evidence presented, it is determined that Claimant's impairments have a major effect on his ability to perform even basic work activities. The objective medical evidence provided by the Claimant's medical history and medical examination reports place the Claimant at the less than sedentary activity level. The total impact caused by the physical impairment suffered by the Claimant must be considered. In doing so, it is found that the combination of the Claimant's physical impairments have a major impact on his ability to perform basic work activities. Accordingly, it is found that the Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a). After review of the entire record, and in consideration of the Claimant's age, education, work experience and residual functional capacity it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of February 24, 2012.

Accordingly, the Department's decision is hereby REVERSED

1. The Department is ORDERED to initiate a review of the application dated February 24, 2012 and retro application if not done previously, to determine Claimant's non-medical eligibility.
2. A review of this case shall be set for February 2014.



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

Date Signed: February 27, 2013

Date Mailed: February 27, 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

2012- 68471/LMF

LMF/cl

cc:

