

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

IN THE MATTER OF:

[REDACTED]

New Reg. No.: 2012-70474
Old Reg. No.: 2012-7082
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 19, 2012
County DHS: Eaton

SUPERVISING ADMINISTRATIVE LAW JUDGE: Marya A. Nelson-Davis

**ORDER DENYING REQUEST
FOR REHEARING/RECONSIDERATION**

This matter is before the undersigned Supervising Administrative Law Judge pursuant to Claimant's timely Request for Rehearing/Reconsideration of the Hearing Decision generated by the assigned Administrative Law Judge (ALJ) at the conclusion of the hearing conducted on January 19, 2012, and mailed on July 26, 2012, in the above-captioned matter.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 400.919, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program that is the basis for the claimant's benefits application, and **may** be granted so long as the reasons for which the request is made comply with the policy and statutory requirements. MCL 24.287 also provides for rehearing if the hearing record is inadequate for judicial review.

A rehearing is a full hearing which **may** be granted if

- The original hearing record is inadequate for purposes of judicial review;
- There is newly discovered evidence **that existed** at the time of the original hearing that could affect the outcome of the original hearing decision.

A reconsideration is a paper review of the facts, law or legal arguments and any newly discovered evidence **that existed** at the time of the hearing. It **may** be granted when the original hearing record is adequate for purposes of judicial review and a rehearing is **not** necessary, but one of the parties is able to demonstrate that the ALJ failed to accurately address all the relevant issues **raised in the hearing request**. Reconsiderations **may** be granted if requested for one 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 affect the substantial rights of the claimant
- Failure of the Administrative Law Judge to address other relevant issues in the hearing decision.

Claimant's representative, [REDACTED] requested a reconsideration/rehearing based on a misapplication in policy. Claimant's representative argues that the first misapplication in policy comes from the Administrative Law Judge's (ALJ's) error in not giving weight to the New York Functional Capacity Report found on page 9 of the medical packet which Claimant's primary treating cardiologist completed. The report indicates that Claimant falls under the Functional Class IV, which consists of patients with cardiac disease resulting in an inability to carry any physical activity without discomfort; and Claimant falls under the Therapeutic Classification D, which consists of patients with a cardiac disease whose ordinary physical activity should be markedly restricted. Claimant's representative states that Claimant has acute/severe aortic stenosis with congenital bicuspid aortic valve, requiring valve replacement and repair of ascending aortic aneurysm with graft; and Claimant has been diagnosed with blood loss, anemia, sarcoidosis and ureter obstruction. Claimant's representative feels that the assigned ALJ should have, "if nothing else", looked at a closed period of disability for Claimant from his major cardiac surgery through his expected normal convalescence date which would have been at least a 12 month period from his surgery date. Claimant representative argues that the assigned ALJ failed to consider and look at the impact the combined documented and diagnosed medical issues taken in combination, and Claimant was not capable of any kind of work activity for the closed period of January 2011 to January 2012 while he was healing from his major heart surgery.

In this case, the material objective medical evidence revealed the following: **(1)** Claimant underwent aortic valve replacement and repair of ascending aorta on January 12, 2011, after being diagnosed with aortic stenosis and aortic insufficiency, presumably from congenitally bicuspid aortic valve and ascending aortic aneurysm. (Claimant Exhibit A, pp. 6, 7, 18 & 20). **(2)** According to a Medical Examination Report completed by Claimant's treating physician who specializes in Cardiovascular and Thoracic surgery: Claimant's physical examination on January 26, 2011 was completely normal except for "Chest incision pain s/p surgery"; Claimant condition was considered stable; and the doctor indicated that Claimant was able to meet his needs in the home without assistance. (Department Exhibit A, pp. 7 & 8). **(3)** According to a February 18, 2011 cardiovascular report: Claimant did not have any specific cardiovascular symptoms, but did appear depressed. It was noted that he had been drinking a fair amount of alcohol prior to the cardiac surgery, and he had not had any alcohol since that time, and that was probably playing some role in it. Claimant did have some pain at the sternal scar site, but denied any undue shortness of breath, chest pain, other than the scar pain. Claimant had normal prosthetic valve sounds and no evidence of any aortic regurgitation. (Claimant Exhibit A, pp. 43 & 44). **(4)** According to a Cardiovascular progress report dated June 23, 2011: Claimant was doing very well from a cardiovascular standpoint without any symptoms; and his echocardiogram showed

normal LV function and normally functioning aortic valve. Claimant's only complaint was panic attacks. (Claimant Exhibit A, pp.38, 41 & 42). (4) Claimant was diagnosed with ureteropelvic junction obstruction. On August 22, 2011, he underwent cystoscopy with right retrograde pyelogram and right ureteral stent placement, along with robotic-assisted laparoscopic right dismembered pyeloplasty. The cystoscopy was normal, and right retrograde pyelogram revealed dilated right renal pelvis and a normal ureter. The microscopic diagnosis revealed right ureteropelvic junction-benign urothelial mucosa with atrophy, and muscularis propria with no specific pathologic changes. Claimant tolerated the procedure well and was released from the hospital 3 days later. By postoperative day 3, Claimant's pain was well controlled; he was tolerating food without nausea or vomiting; and he was ambulating without difficulty. (Claimant Exhibit A, pp. 1 & 2)

The assigned ALJ found that Claimant had a severe physical impairment that met the severity and 12-month duration standard for MA-P purposes on the basis that the second step is a *de minimus* standard. The ALJ completed the 5-step sequential evaluation process.

Based on the aforementioned objective medical evidence, the assigned ALJ properly determined that Claimant failed to establish that he had a severe impairment that met or equaled a listed impairment found at 20 CFR, Part 404, Subpart P, Appendix 1.

Since the evidence on the record established that Claimant had no past relevant work history, the ALJ properly determined Claimant's residual functional capacity at Step 5.

Based on the objective medical evidence on the record, the ALJ properly concluded that Claimant had the residual functional capacity to do at least light work at the last step of the sequential evaluation. Claimant had the burden of providing the necessary objective medical evidence to establish disability. A statement by a medical source that an individual is "disabled" or "unable to work" does not mean that disability exists. 20 CFR 416.927(e). Claimant had aortic valve replacement and repair of ascending aorta on January 12, 2011. By January 26, 2011, his physical examination was completely normal, except for chest incision pain, and the treating cardiologist indicated that Claimant was able to meet his needs in the home without assistance. Progress reports from February and June 2011 state that Claimant was doing very well with no cardiovascular symptoms, and his echocardiogram was normal. On August 22, 2011, he underwent cystoscopy with right retrograde pyelogram and right ureteral stent placement, along with robotic-assisted laparoscopic right dismembered pyeloplasty, with no complications. At the time of discharge, Claimant's pain was well controlled; he was tolerating food without nausea or vomiting; and he was ambulating without difficulty. Claimant was in the hospital for 3 days and released in stable condition. Additionally, there is no clinical evidence on the record to showing the level of severity of Claimant's sarcoidosis or that it prevents him from engaging in substantial gainful activity. The assigned ALJ properly concluded that there was no corroborating medical evidence to substantiate any other medical condition that prevented Claimant from engaging in basic work activities.

Claimant would be considered a young individual with a high school education and no past relevant work experience. Claimant would be considered not disabled according to Medical Vocational Rule 202.20, if limited to light work.

I find that the ALJ's Hearing Decision and Order is in accordance with the applicable law and policy, and there is no legal basis for which to grant the request for rehearing/reconsideration.

IT IS THEREFORE ORDERED THAT:

The request for rehearing/reconsideration is **DENIED**.

/s/
Marya A. Nelson-Davis
Supervising Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 16, 2013

Date Mailed: May 17, 2013

NOTICE: The law provides that within 30 days of receipt of this decision, the claimant may appeal this decision to the circuit court for the county in which he/she lives.

MAND/las

cc:

