

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

**IN THE MATTER OF:**

[REDACTED]

Reg No.: 2012-72780  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: December 6, 2012  
Alger County DHS

**ADMINISTRATIVE LAW JUDGE:** Corey A. Arendt

**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 Lansing, Michigan on December 6, 2012. The Claimant appeared and testified. Participating on behalf of the Department of Human Services ("Department") was [REDACTED]

**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. On April 23, 2012, the Claimant submitted an application for public assistance seeking MA-P benefits.
2. On August 14, 2012, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit A, pp. A4, A5)
3. On August 20, 2012, the Department notified the Claimant of the MRT determination.
4. On August 27, 2012, the Department received the Claimant's written request for hearing. (Exhibit A, pp. A2, A3)

5. On October 11, 2012, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit B)
6. On or around January 10, 2013, additional medical evidence was submitted to SHRT for a second review.
7. On February 19, 2013, SHRT again found the Claimant not disabled. (Exhibit ?).
8. The Claimant alleged physical disabling impairments due to arthritis, degenerative joint disease (DJD) and hypertension.
9. The Claimant alleged mentally disabling impairments due to depression and anxiety.
10. At the time of hearing, the Claimant was 49 years old with a [REDACTED] birth date; was 5'9" in height; and weighed 170 pounds.
11. The Claimant has a high school education and previously worked as a general laborer, merchandiser and general contractor.

### **CONCLUSIONS OF LAW**

The Medical Assistance program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services, 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 Tables ("RFT").

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.<sup>1</sup> 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.<sup>2</sup> An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability.<sup>3</sup> 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.<sup>4</sup>

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<sup>1</sup> 20 CFR 416.905(a).

<sup>2</sup> 20 CFR 416.913.

<sup>3</sup> 20 CFR 416.908; 20 CFR 416.929(a).

<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized.<sup>7</sup> 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 (i.e. age, education, and work experience) to determine if an individual can adjust to other work.<sup>8</sup>

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps.<sup>9</sup> If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required.<sup>10</sup> If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four.<sup>11</sup> Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence.<sup>12</sup> An individual's residual functional capacity assessment is evaluated at both steps four and five.<sup>13</sup> 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.<sup>14</sup> In general, the individual has the responsibility to prove disability.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>

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<sup>5</sup> 20 CFR 416.929(c)(3).

<sup>6</sup> 20 CFR 416.929(c)(2).

<sup>7</sup> 20 CFR 416.920(a)(1).

<sup>8</sup> 20 CFR 416.920(a)(4); 20 CFR 416.945.

<sup>9</sup> 20 CFR 416.920(a)(4).

<sup>10</sup> 20 CFR 416.920(a)(4).

<sup>11</sup> 20 CFR 416.920(a)(4); 20 CFR 416.945.

<sup>12</sup> 20 CFR 416.945(a)(1).

<sup>13</sup> 20 CFR 416.920(a)(4).

<sup>14</sup> 20 CFR 416.994(b)(1)(iv).

<sup>15</sup> 20 CFR 416.912(a).

<sup>16</sup> 20 CFR 416.921(a).

<sup>17</sup> 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 as the Claimant was laid off. Therefore the Claimant 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.<sup>18</sup> 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.<sup>19</sup> Basic work activities means the abilities and aptitudes necessary to do most jobs.<sup>20</sup> 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.

The second step allows for dismissal of a disability claim obviously lacking in medical merit.<sup>21</sup> The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint.<sup>22</sup> 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.<sup>23</sup>

In the present case, the Claimant alleges disability due to arthritis, degenerative joint disease, hypertension, depression and anxiety.

On May 31, 2011, the Claimant was seen by Dr. Jeffrey R. Stitgen, M.D., at Dean Clinic East. The Claimant reported right hip pain and difficulties with his left knee. Dr. Stitgen found the Claimant to walk with a Trendelenburg lurch and pain with leg flexion past 90

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<sup>18</sup> 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(b).

<sup>19</sup> 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c).

<sup>20</sup> 20 CFR 416.921(b).

<sup>21</sup> *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988).

<sup>22</sup> *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985).

<sup>23</sup> *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

degrees with about 20 degrees of internal and external rotation. [REDACTED] assessed the Claimant as having advancing degenerative changes in the Claimant's right hip.

On November 9, 2011, an X-ray was taken of the Claimant's hips. The right hip views showed mild to moderate degenerative arthritis and no signs of impingement. The left hip views showed no sign of polyethylene wear, osteolysis or loosening.

On December 7, 2011, the Claimant was seen [REDACTED] for a two week follow up to an intra-articular injection performed on the Claimant's right hip. [REDACTED] found the Claimant's hip to be markedly improved. During the appointment, X-ray's were taken of the Claimant's knees. The X-rays showed no significant degenerative change and no angular deformity.

On January 13, 2012, the Claimant was admitted to the [REDACTED] for overdosing on xanax and vicodin. The Claimant upon examination indicated he had no intention of committing suicide. The Claimant was released from the hospital on January 14, 2012.

On February 2, 2012, the Claimant underwent an arthroscopic anterior cruciate reconstruction using the Claimant's patellar tendon and a partial medial and lateral meniscectomies.

On February 23, 2012, the Claimant was seen by [REDACTED] for physical therapy. The Claimant was no longer using crutches and had stopped taking all pain medication. The Claimant presented with a strong quad set with prone knee flexion of 90 degrees in the left and 110 in the right. The Claimant did have a normal gait without assistive device.

On April 24, 2012, the Claimant was seen by [REDACTED] as a new patient. The Claimant reported to [REDACTED] for medicine refills and hip pain. Dr. Reaume found the Claimant to have mild depression and non-radiating lateral hip pain found along the groin.

On July 18, 2012, the Claimant was seen by [REDACTED] to address chronic hip pain. The Claimant complained of worsening right hip pain radiating from his groin. And described the pain as aching and moderate in intensity. Dr. Reaume found the Claimant to have an antalgic gait with a decreased range of motion with bilateral hip flexion, adduction, abduction, internal rotation and external rotation.

On July 19, 2012, the Claimant underwent an independent psychiatric/psychological exam. The exam was administered by [REDACTED] [REDACTED] found the Claimant to be intelligent and able to follow 1 and 2 part directives but that his physical condition would limit him from his customary jobs.

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 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 evidence confirms treatment/diagnoses of a left hip replacement, mild to moderate degenerative arthritis in the Claimant's right hip, complete left anterior cruciate ligament reconstruction, major depressive disorder and anxiety.

Listing 1.00 (musculoskeletal system) and listing 12.00 (mental disorders), specifically listing 1.02A (major dysfunction of a joint), 1.08 (soft tissue injury), 12.04 (affective disorders) and 12.06 (anxiety-related disorders) were considered in light of the objective medical evidence. Although the objective medical records establish physical impairments and mental disorders, these records do not meet the intent and severity requirements of a listing, or its equivalent. Accordingly, the Claimant can not be found disabled, or not disabled at Step 3; therefore, the Claimant's eligibility is considered under Step 4.<sup>24</sup>

Before considering the fourth step in the sequential analysis, a determination of the individual's residual functional capacity ("RFC") is made.<sup>25</sup> An individual's RFC is the most he/she can still do on a sustained basis despite the limitations from the impairment(s).<sup>26</sup> The total limiting effects of all the impairments, to include those that are not severe, are considered.<sup>27</sup>

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup> To be considered capable of performing a full or wide range of light work, an individual must

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<sup>24</sup> 20 CFR 416.905(a).

<sup>25</sup> 20 CFR 416.945.

<sup>26</sup> *Id.*

<sup>27</sup> 20 CFR 416.945(e).

<sup>28</sup> 20 CFR 416.967.

<sup>29</sup> 20 CFR 416.967(a).

<sup>30</sup> *Id.*

<sup>31</sup> 20 CFR 416.967(b).

<sup>32</sup> *Id.*

have the ability to do substantially all of these activities.<sup>33</sup> An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time.<sup>34</sup> Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds.<sup>35</sup> An individual capable of performing medium work is also capable of light and sedentary work.<sup>36</sup> Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds.<sup>37</sup> An individual capable of heavy work is also capable of medium, light, and sedentary work.<sup>38</sup> 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.<sup>39</sup> An individual capable of very heavy work is able to perform work under all categories.<sup>40</sup>

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional.<sup>41</sup> In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity with the demands of past relevant work.<sup>42</sup> 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.<sup>43</sup> Examples of non-exertional limitations or restrictions include difficulty to 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 (i.e. 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.<sup>44</sup> 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.<sup>45</sup> 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.<sup>46</sup>

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> 20 CFR 416.967(c).

<sup>36</sup> *Id.*

<sup>37</sup> 20 CFR 416.967(d).

<sup>38</sup> *Id.*

<sup>39</sup> 20 CFR 416.967(e).

<sup>40</sup> *Id.*

<sup>41</sup> 20 CFR 416.969a(a).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> 20 CFR 416.969a(c)(1)(i) – (vi).

<sup>45</sup> 20 CFR 416.969a(c)(2).

<sup>46</sup> *Id.*

In this case, the evidence confirms treatment/diagnoses of a left hip replacement, mild to moderate degenerative arthritis in the Claimant's right hip, complete left anterior cruciate ligament reconstruction, major depressive disorder and anxiety. The Claimant testified that he is able to walk 150 yards; remain seated all day long; stand for 20 minutes and lift/carry approximately 8 to 10 pounds. After review of the entire record and considering the Claimant's testimony, it is found, at this point, that the Claimant maintains the residual functional capacity to perform at least unskilled, sedentary work as defined by 20 CFR 416.967(a).

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment.<sup>47</sup> An individual is not disabled if he/she can perform past relevant work.<sup>48</sup> 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.<sup>49</sup> Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered.<sup>50</sup>

The Claimant has previously been employed as a construction worker (869.664-014). Therefore, in light of the entire record, it is found that the Claimant is unable to perform past relevant work thus the fifth step in the sequential analysis is required.

In Step 5, an assessment of the Claimant's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made.<sup>51</sup> At the time of hearing, the Claimant was 49 years old and, thus, considered to be a younger individual for MA-P purposes. The Claimant is a high school graduate. 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 obtain substantial gainful employment.<sup>53</sup> 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.<sup>54</sup> 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.<sup>55</sup>

Deleted: Disability is found if an individual is unable to adjust to other work.<sup>52</sup>

Deleted: The age for younger individuals (under 50) generally will not seriously affect the ability to adjust to other work.<sup>56</sup>

In light of the foregoing, it is found that the Claimant maintains the residual functional capacity for work activities on a regular and continuing basis 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, finding no contradiction with the Claimant's non-exertional limitations, and in consideration of the Claimant's age, education, and RFC,

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<sup>47</sup> 20 CFR 416.920(a)(4)(iv).

<sup>48</sup> *Id.*; 20 CFR 416.960(b)(3).

<sup>49</sup> 20 CFR 416.960(b)(1).

<sup>50</sup> 20 CFR 416.960(b)(3).

<sup>51</sup> 20 CFR 416.920(4)(v).

<sup>53</sup> *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984).

<sup>54</sup> *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978).

<sup>55</sup> *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

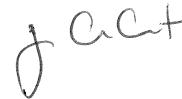
and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.21, the Claimant is found not disabled at Step 5.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant not disabled for purposes of the MA-P benefit program.

Accordingly, it is ORDERED:

The Department's determination is **AFFIRMED**.



Corey A. Arendt  
Administrative Law Judge  
For Maura Corrigan, Director  
Department of Human Services

Date Signed: May 13, 2013

Date Mailed: May 14, 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

2012-72780/CAA

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P. O. Box 30639  
Lansing, Michigan 48909-07322

CAA/las

cc:

