

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

IN THE MATTER OF:

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██████████████████

Reg. No.: 2012 78601
Issue No.: 2009, 4031
Case No.: ██████████
Hearing Date: February 28, 2013
DHS 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 upon the Claimant's request for a hearing. After due notice, an in person hearing was held in Inkster, Michigan, on January 24, 2013. The Claimant appeared and testified. ██████████, Medical Contact Worker, 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 and State Disability Assistance benefits on April 3, 2012.
2. On September 7, 2012, the Medical Review Team ("MRT") found the Claimant not disabled.
3. The Department notified the Claimant of the MRT determination on September 7, 2012.
4. On September 18, 2012, the Department received the Claimant's timely written request for hearing.

5. On November 8, 2012 the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued on March 13, 2013 to obtain new medical evidence and updated medical examinations.
7. The new medical evidence was submitted to the State Hearing Review Team on July 26, 2013.
8. On August 2, 2013 the State Hearing Review Team found the Claimant not disabled.
9. The Claimant alleges physical disabling impairments due to bilateral pulmonary emboli and left lower extremity deep venous thrombus and ulnar fracture and cruciate ligament rupture. The Claimant at the time of the hearing was using crutches to ambulate.
10. The Claimant has alleged mental disabling impairments of anxiety and depression.
11. At the time of hearing, the Claimant was ■ years old with an ■ birth date. The Claimant is now ■ years of age. Claimant is 6’1” in height; and weighed 180 pounds.
12. The Claimant has a high school education. The Claimant has no past employment.
13. 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 impairments due to bilateral pulmonary emboli and left lower extremity deep venous thrombus and ulnar fracture and cruciate ligament rupture. The Claimant at the time of the hearing was using crutches to ambulate.

The Claimant has alleged mental disabling impairments due to anxiety and depression.

A summary of the medical evidence follows.

The Claimant was admitted to the hospital on [REDACTED] due to complications from an injury to his left leg and fractures in knee and tibia, left leg was swollen. The Claimant presented to the ER in a wheelchair with crutches due to difficulty ambulating. The Claimant had a CT of chest which showed bilateral pulmonary emboli and a venous Doppler of left lower extremity showing deep vein thrombosis. The Claimant was administered anticoagulants. An x-ray of left knee showed mild degenerative change, no acute fracture or dislocation, with trace joint effusion. An ultrasound of left lower extremity deep venous system, and right anterior and posterior tibial arteries and abdominal aorta was performed. The left common femoral vein and femoral vein were occluded with minimal trickle flow. The left common femoral artery, and left popliteal artery, noted arrhythmia. Final impression was left lower extremity deep venous thrombosis, arrhythmia, and limited proximal abdominal aorta.

On [REDACTED] the Claimant was seen for an acute fracture of the right wrist, distal ulna, and the report noted a chronic fracture of scaphoid, unhealed. The fracture was severe as one-fourth of the bone width medial displacement of the distal fracture fragment. Noted degenerative changes throughout, most pronounced at the radiocarpal, first carpometacarpal, first metacarpophalangeal and interphalangeal joints with joint space narrowing with radiographic foreign bodies. The report also noted a concussion but was not serious. A consult report for this admission noted Depression, major recurrent, pulmonary embolism and infarction, thrombophlebitis of lower extremity, superficial vessels, spinal stenosis of lumbar region without neurogenic claudication, fracture of shaft of ulna, (closed) and alpha 1 antitrypsin deficiency.

An MRI of Claimant's left knee was performed on [REDACTED]. The impression was grad 3 ACL rupture, flap tear of the medial meniscus, and macerated posterior horn with poor delineation of the strut suggest meniscocapsular separation. Likely ganglion cyst posterior to tibial attachment of the PCL. Osteoarthritis of the medial and patellofemoral compartments.

A consultative Mental Status Examination was conducted on [REDACTED]. The diagnosis was alcohol dependence in remission with adjustment disorder. GAF was 50 and prognosis was guarded. The Medical Source Statement noted that the history of symptoms were consistent with an adjustment disorder and depression secondary to his general medical condition as well as alcohol dependence in remission. The Mental Residual Functional Capacity assessment found no marked limitations and not significantly limited to perform within the requirements of employment.

The Claimant's treating physician completed a Medical Examination report on [REDACTED].

The examining physician imposed the following limitations, the Claimant was rated as occasionally being able to lift 10 pounds, could stand and or walk less than 2 hours in an 8 hour work day and sit less than 6 hours in an 8 hour work day. The examiner found a wheel chair was necessary as an assistive device. The Claimant could operate foot controls with right foot/leg only and could reach and push and pull with right hand and arm. The medical findings noted deep vein thrombosis in left leg, and rotator cuff tear left shoulder. The examiner also noted mental limitations with comprehension and memory. The report also noted that in the opinion of the treating doctor the Claimant needed assistance with cooking.

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.

Listing 4.11, Chronic Venous Insufficiency was reviewed and it was determined that the listing was not met. Listing 12.04 Affective Disorders (depression) and 12.06 Anxiety Related Disorders were reviewed and based upon the Claimant's lack of treatment and the Consultative Mental Status Examination and the Mental Residual functional capacity examination it is determined that neither of the Listings were met.

The fourth step in analyzing a disability claim requires an assessment of the claimant's residual functional capacity 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 does not have any relevant past employment in the last 15 years. The Claimant's residual functional capacity must still be determined. The Claimant testified to the following abilities. The Claimant credibly testified that he does not grocery shop as he is unable to, as he is on crutches. His ability to do household chores is also limited for the same reasons. The Claimant indicated that his standing is limited due to his use of crutches as a result of his ankle and knee injury and Claimant's treating physician has also indicated that assistive devices, wheel chair, is medically required. The independent mental status examiner also noted that the Claimant had difficulty ambulating and the Claimant did use crutches at the hearing. The Claimant indicated that he could carry a quart of milk and that when sitting he requires his left knee to be elevated. The Claimant has some limitation on his range of motion of the left shoulder due to a rotator injury and his left foot is swollen and right ankle is in pain due to an improper bone adjustment.

The Claimant further credibly testified that he cannot stand due to pain and fatigue, and can sit up to an hour. Claimant can only walk short distance, about 30 feet, due to problems with his leg and ankle. The heaviest weight he can carry is a quart of milk.

Based upon the medical examination by Claimant's treating doctor these limitations were verified on examination and limitations were imposed as follows. The following limitations were imposed, occasionally lifting 10 pounds, standing and/or walk less than two hours in 8 hour work day, a wheel chair was deemed medically necessary, the Claimant could perform simple grasping, reaching, pushing and pulling and fine manipulation with both hands. No operation of foot controls with the left foot.

In light of the Claimant's testimony and medical records and the evaluation of his treating doctor, and in consideration of the Occupational Code, the Claimant's prior work is not capable of classification; however, it is determined that the Claimant's residual functional capacity makes him capable of less than sedentary work.

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 54 years old and, thus, is considered to be a person closely approaching advanced age for MA purposes. The Claimant has a high school education and as set forth above has no relevant work history of substantial gainful employment. 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).

In this case the evidence reveals that the Claimant has had several hospitalizations due to broken bones in his ankle and wrist with deep vein thrombosis affecting his left leg. The broken bones both required surgical interventions. The Claimant's treating doctor imposed limitations restricting the Claimant to work categorized as less than sedentary. The doctor has treated the Claimant since [REDACTED]

The objective medical evidence provided by the Claimant's longstanding treating doctor's evaluation places the Claimant at the less than sedentary activity level. Deference was given to the opinion of the treating physician. The total impact caused by the physical impairment suffered by the Claimant, when considered together, require that a determination that he cannot reasonably be able to sustain substantial gainful employment. In doing so, it is found that the combination of the Claimant's physical impairments have a major impact on his ability to perform and sustain performance of 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 State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, the Claimant is found disabled for purposes of the MA-P program; therefore, he is found disabled for purposes of SDA benefit program.

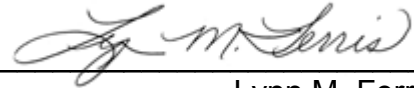
DECISION AND ORDER

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 and SDA application dated April 3, 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 August 2014 in accordance with Department policy.



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

Date Signed: August 29, 2013

Date Mailed: August 29, 2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

2012-78601/LMF

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

LMF/cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]