

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-64406
Issue Nos.: 2009
Case No.: [REDACTED]
Hearing Date: December 6, 2012
DHS County: Oakland (04)

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 conducted from Pontiac, Michigan on December 6, 2012. The Claimant appeared and testified. [REDACTED] the Claimant's Authorized Hearing Representative, also appeared. [REDACTED] ES, 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. On November 23, 2011 and May 24, 2012 the Claimant submitted an application for public assistance seeking MA-P.
2. On April 10, 2012 the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1)
3. The Department notified the Claimant of the MRT determination on April 11, 2012.
4. On July 9, 2012 the Department received the Claimant's written request for hearing.

5. On August 24, 2012, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued December 11, 2012. The new evidence was submitted to the State Hearing Review Team on January 16, 2013.
7. February 24, 2012 the State Hearing Review Team found the Claimant not disabled.
8. The Claimant alleges physical disabling impairments due to severe acute abdominal pain with vomiting and nausea, including diverticulosis without diverticulitis, acute pancreatitis, erosive gastritis, sigmoid polyp, shoulder restriction of movement and obstructive sleep apnea and uses a CPAP machine.
9. The Claimant has not alleged any mental disabling impairment.
10. At the time of hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth date. Claimant is 6’2” in height; and weighed 300 pounds. The Claimant has lost 40 pounds in the last year.
11. The Claimant has a high school education and has a past employment history as a long haul truck driver.

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 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 disabling impairments due to severe acute abdominal pain with vomiting and nausea, including diverticulosis without diverticulitis, acute pancreatitis, erosive gastritis, sigmoid polyp, shoulder restriction of movement and obstructive sleep apnea and uses a CPAP machine.

A summary of the medical evidence presented at the hearing and additional evidence provided pursuant to the Interim Order follows.

On [REDACTED] the Claimant was seen at the emergency room. The Claimant was given morphine and ondansetron and prescribed medication including vicodin, dicyclomine, naproxen, omeprazole (prilosec).

An MRI was ordered to be taken of the Claimant's left shoulder on [REDACTED]. Results were not available. It is unclear whether the MRI was performed as the Claimant has no health insurance.

An x-ray was ordered to be taken of the Claimant's jaw bone due to pain and growth. Results were not available.

On [REDACTED] Claimant was seen for abdominal pain, nausea and vomiting at the emergency room and not admitted. Pain was resolved when stronger pain medication was given. On examination there were bowel sounds present in 4 quadrants with no focal localized tenderness to light or deep palpation. The Claimant was discharged the same day after pain resolved. Final impression: abdominal pain, chronic pain management, and vomiting.

On [REDACTED] Claimant was admitted for a two-day hospital stay arriving by ambulance with symptoms of diaphoresis, sweating, vomiting and nausea persistent. The admission was due to stabbing pain that comes on suddenly, pain level was 10/10. During the stay a CT of the abdominal pelvic showed diverticulitis of the sigmoid colon with wall thickening and colitis is less likely. On examination bowel sounds were present. Final impression was acute severe abdominal pain with elevated lactate, etiology unclear. Claimant was discharged and advised to follow up. The diagnosis was diverticulitis.

On [REDACTED] the Claimant was admitted to the hospital for a 3-day stay. The Claimant presented with vomiting and nausea, abdominal pain and loose stool with constipations associated with bleeding and red stool. A colonoscopy revealed rectal ulceration and duodenitis, hematochezia and marijuana abuse. A physical exam showed significant reduced muscle strength of left arm. The Claimant's status at discharge was improved and he was discharged in stable condition. The Claimant

could not follow up for colonoscopy because he had no insurance. During the admission the Claimant advised the doctors that he lost at least a total of 160 pounds as he used to weigh 465 pounds but now is just above 300. The Claimant's abdomen was distended and mildly tender to touch during examination. The pathology report regarding the biopsies taken during colonoscopy noted focally active colitis of colon, and rectal biopsy active colitis with mucosal ulceration, they note no histologic findings of chronicity to suggest idiopathic inflammatory bowel disease. The results of the colonoscopy were duodenal scalloping, rectal ulceration, possibly secondary to fecal impaction, possible proclivities, diverticulosis and colon polyps. An ultrasound of the abdomen noted no acute intra abdominal process.

On [REDACTED] the Claimant was taken to the ER for abdominal pain and persistent nausea and vomiting. Basic tests were conducted and all tests ruled leukocytosis and pancreatitis was ruled out. The Claimant was given diazepam and Zofran. Claimant was discharged for home same day in no acute distress with referral to medical clinic. Diagnosis was abdominal pain resolved, unclear etiology.

An MRCP of the Claimant's abdomen and pelvis was performed on [REDACTED]. The impressions were idiopathic pancreatitis, abdominal pain, nausea and vomiting. The conclusion of the testing was the common bile duct was normal in caliber, mild prominence of the pancreatic duct and no definite cholelithiasis (reference to gall stones).

On [REDACTED] Claimant was admitted due to severe abdominal pain, nausea and vomiting with complaints of chills and sweating during pain attacks.

On [REDACTED] the Claimant was taken to the ER by ambulance complaining of nausea and abdominal discomfort. He was discharged the same day in good condition with a diagnosis of gastritis and advised to follow up with a GI physician. At the time Claimant reported no nausea, no fever or chills, dark stool no vomiting or diarrhea. The abdomen had no tenderness, no distention, no rebound and no guarding. The Claimant was given Zofran, and morphine. The Claimant was discharged in good condition. Diagnosis was gastritis.

The Claimant was seen at the emergency room on [REDACTED] for abdominal pain and discharged home after pain subsided. A CT of the abdomen which showed non-obstructive bowel gas pattern with no acute intrapulmonary disease. CT shows no obstruction, no free air or free fluid and presence of diverticulosis without diverticulitis. It is unclear if an admission occurred.

On [REDACTED] Claimant was admitted for a 4-day hospital stay. The Claimant was admitted for abdominal pain with nausea and vomiting. The Claimant was discharged with a diagnosis of acute pancreatitis, acute gastrointestinal bleed, history of peptic ulcer, hypertension and obstructive sleep apnea. During this admission a colonoscopy confirmed the patient had erosive gastritis, hiatal hernia, sigmoid polyp, diverticulosis and internal hemorrhoids. Claimant was discharged in stable condition.

On [REDACTED] the Claimant was discharged from a hospital stay after admission for abdominal pain and nausea and vomiting. The diagnosis was colitis.

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 objective medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. Accordingly, 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 Claimant asserts disabling impairments due to severe acute abdominal pain with vomiting and nausea, including diverticulosis without diverticulitis, acute pancreatitis, erosive gastritis, sigmoid polyp, shoulder restriction of movement and obstructive sleep apnea and uses a CPAP machine.

Listing 5.00 Digestive System was considered in light of the objective medical evidence. Ultimately, it is found that the Claimant suffers from some medical conditions; however, the Claimant's impairments do not meet the intent and severity requirement of a listing. The Claimant cannot be found disabled, or not disabled, at Step 3. Accordingly, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 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's prior work history consists of employment as a long haul truck driver, driving 12 hours per day cross country. The truck he drove was an 18-wheeler and required the Claimant to be on the road most of the month. In light of the Claimant's testimony and records, and in consideration of the Occupational Code, the Claimant's prior work is classified as semi-skilled sedentary work.

The Claimant testified that he is able to walk about ½ block which he described as from the house to the car. The Claimant can bend at the waist, cannot squat, he can shower and dress himself, tie his shoes and touch his toes. The Claimant further testified that the heaviest weight he could carry was 5 pounds. The Claimant did not know how long he could stand and he could sit an hour. The Claimant testified that he is able to go up and down stairs slowly and with pain. The Claimant testified that he does have difficulty sleeping and uses a CPAP machine for his sleep apnea. The Claimant can cook breakfast for himself. The objective medical evidence places the Claimant at mild to sedentary activity. It is noted that no medical evidence was presented to support knee pain, pain in the feet or arthritis and that there was some medical indication of shoulder pain. 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; due in large part to the frequency which he visits the hospital emergency room with abdominal pain, nausea and vomiting and 12-hour day long haul driving is not conducive to the Claimant's having to be treated for pain when an abdominal pain episode occurs. Thus, the fifth step in the sequential analysis is required.

In light of the Claimant's testimony and records, and in consideration of the Occupational Code, the Claimant's prior work is classified as semi-skilled sedentary work.

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 [REDACTED] years old and, thus, is considered to be an individual of younger age for MA purposes. The Claimant graduated from high school. 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).

Claimant alleges physical impairments due to severe acute abdominal pain with vomiting and nausea, including diverticulosis without diverticulitis, acute pancreatitis, erosive gastritis, sigmoid polyp, shoulder restriction of movement and obstructive sleep apnea and uses a CPAP machine. None of the objective findings note knee pain or foot pain, nor do any of the medical reports reviewed note these conditions as testified to by the Claimant. There is no objective evidence that these conditions cause Claimant to be unable to walk further than half a block as testified to by the Claimant. Additionally the Claimant testified that he could perform truck driving but not when his abdominal pain was episodic. Based upon the foregoing it appears that the Claimant could sit for extended periods of time and does so most days and is able to walk around his home and as necessary without a cane, thus giving Claimant the capacity for sedentary work.

In consideration of the foregoing and in light of the objective limitations, it is found that the Claimant retains the residual functional capacity for work activities on a regular and continuing basis to meet at the physical and mental demands required to perform sedentary work as defined in 20 CFR 416.967(a). After review of the entire record and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.21 it is found that the Claimant is not disabled for purposes of the MA-P program 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.



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

Date Signed: March 28, 2013

Date Mailed: March 28, 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

2012-64406/LMF

LMF/cl

cc:

