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

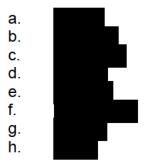
IN THE MAT	TER OF:	Reg. No: 2009
		135dC 140. 2003
ADMINISTR	ATIVE LAW JUDGE: Aaron McClintic	
	DECISION AND ORDE	<u>R</u>
and MCL 400 person heari <u>Claimant</u> 's A	s before the undersigned Administrative La 0.37 upon the Cla imant's request for a he ng was held on Cla uthorized Hearings Represen tative, o appeared. The Department was represe	earing. After due notice, an in- aimant appeared and testified.
<u>ISSUE</u>		
Did the Department properly deny Claimant's Medical Assistance (MA) application?		
	FINDINGS OF FACT	
	trative Law Judge, based upon the com the whole record, finds as material fact:	petent, material and substantial
1.	Claimant applied for MA-P coverage back to	, with a request for retroactive
2.	The Medical Review Team denied the app	plication on
3.	Claimant filed a reques t for hearing on denial.	regarding the MA
4.	An in-person hearing was held on	

Claimant is 6' 0" tall and weighs 222 pounds.

6.



- 7. Claimant is 57 years of age.
- 8. Claimant's impairments have been medically diagnosed as diabetes, hypertension, asthma, seizures and back pain.
- 9. Claimant has the foll owing symptoms: pain, fa tigue, and shortness of breath.
- Claimant completed high school.
- 11. Claimant is able to read, write, and perform basic math skills.
- 12. Claimant is not working. Claimant last worked in auto parts factory. Claim ant previously worked as a painter and machine operator.
- Cla imant lives with his wife.
- 14. Claimant testified that he cannot perform some household chores.
- 15. Claimant takes the following prescribed medications:



16. Claimant testified to the following physical limitations:

i. Sitting: 60 minutes
ii. Standing: 4-5 minutes
iii. Walking: 200 feet
iv. Bend/stoop: difficulty
v. Lifting: 5-10 lbs.

vi. Grip/grasp: no limitations

- 17. Claimant testified to experiencing pain at a high level of 7-8 on a ten point scale on an every day basis with some pains always present at a low level of 3.
- Following hearing updated records were gathered and forwarded to the State Hearing Rev iew. Claimant agreed to this and waived timelines s standards.



- 19. On Claimant's appeal because the medical evidence of record does not document a mental/physica | I impairment that sign | ificantly limits the Claimant's ability to perform basic work activities.
- 20. An MRI report dated states the follo wing under FINDINGS: "The thoracic cord is normal in signal and morphology. There is normal thoracic kyphosis. The vertebral bodies are maintained in height throughout. There is focal fat or hemangioma seen involving T4 and T 5 vertebral bodies. There is small central disc protrusion at C5/6. The axial images at this level were not obtained. There is 2.1 X 1.6cm area of abnormal marrow signal seen involving the left posterior aspect of T7 and also involving the adjacent costovertebral junction and the left posterior rib adjacent to the costovertebral junc tion. This is hy pointense on T1. hyperintense on T2 and shows enhancement and slight expansion. There is mild central canal and left foraminal stenosis."
- 21. An echocardiogram dated showed ejection fraction of 55%, normal global LV systolic function, abnormal LV diastolic f unction, possible tiny secundum ASD sus pected by color Doppler, and trace aortic regurgitation.
- 22. Claimant testified that he needs helping dressing.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An oppor tunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The Medic al Assistance (MA-P) program 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 the MA-P program 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 Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Feder al Supplemental Security Income (SSI) policy in determining el igibility for disability under the MA-P program. Under SSI, disability is defined as:



...the inability to do any substant ial 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.

Federal regulations r equire that the department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"Disability" is:

...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.

In determining whether an indiv idual is disabled, 20 CFR 4 16.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual f unctional c apacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if t he individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, the Claimant is not working. Therefore, the Claimant is not disqualified a this step in the evaluation.

The second step to be determined in consi dering whether the Clai mant is c onsidered disabled is whether the severity of the impairment. In order to qualify the impairment must be considered severe which is defined as an impairment which significantly limits an individual's physical or mental ab ility to perform basic work activities. Examples of these include:

- 1. Physical functions s uch as walkin g, standing, sitting, lifting, pushing, 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. 20 CFR 416.921(b).



In this case, the Claimant's medical evidence of record supports a finding that Claimant has significant physical and mental limitations upon Claimant's ability to perform basic work activities such as walk ing, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; Medical evidence has clearly established that the Claimant has an impairment (or combination of impairments) that has more than a minimal effect on the Claimant's work activities. See Social Security Rulings: 85-28, 88-13, and 82-63.

In the third step of the analysi s, 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. This Administrative Law Judge finds that the Claimant's medical record does not support a finding that the Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR Part 404, Part A. Listing 1.02 was considered.

The person claiming a physica I or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as clinical/laboratory findings, diagnosis/pre scribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged. 20 CRF 416.913. A conc lusory statement by a physici an or mental health professional that an individual is disabled or blind is not sufficient, without supporting medical evidence, to establish disability. 20 CFR 416.927.

The fourth step of the analys is to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 yiears. The trier of fact must determine whether the impairment(s) presented prevent the Claimant from doing past relevant work. In the present case, the Claimant's past employment was as a heavy equipment operator and construction worker. Working as a heavy machine operator and construction worker as testified to by Claimant would be considered heavy work. The Claimant's impairments would not prevent him from doing past relevant work, because he is not capable of performing work on the heavy exertional level. This Administrative Law Judge will continue through step 5.

In the final step of the analys is, the trier of fact must determine: if the Claimant's impairment(s) prevent the Claim ant form doing other work. 20 CFR 416.920(f). This determination is based upon the Claimant's:

- 1. residual fu nctional c apacity de fined 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 sig nificant numbers in the national economy which the claimant could per form 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 class ify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dicti onary of Occupational Titles, publis hed 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 lik e 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 wor k 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 categor y 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 weig hing up to 25 pounds. If someone can d o medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy wor k. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects we ighing up to 50 pounds. If someone can do heavy wor k, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once the Claimant makes it to the final step of the analy sis, the Claimant has already establis hed a prima fa cie case of disability. *Richardson v Secretary of Health and Human Services*, 732 Fd2 962 (6th Cir, 1984). Moving forward the burden of proof rest s with the state to prove by substantial evidence that the Claimant has the residual function capacity for substantial gainful activity.

After careful review of the medic al evidence presented and Claim ant's statements, and considering the Claimant in the most restrictive circumstances this Administrative La w Judge finds that Claimant would be able to perform work only on the light exertional level.

This Administrative Law Judge finds that Claimant is only capable of the requisite sitting, standing and walk ing for a light exertional job. The Claimant is approaching advanced age at age 57. 20 CFR 416. 963. Claimant's previous work has been



semiskilled but those skills are not transferrable. Federal Rule 20 CFR 404, Subpart P, Appendix 2 contains specific profiles for determining dis ability based on residual functional capacity and vocational profiles. Under Table 1, Rule 202.06 the Claimant is disabled for the purposes of MA-P. Claiman t's testimony regarding his limitations and ability to sit, stand, walk, lift and carry is supported by substantia I medical evidenc e. Claimant is found to be disabled as of

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusion sof law, decides that the Claimant is medically disabled for the purposes of the MA-P and Retro MA programs.

Accordingly, the Department's decis ion in the a bove stated matter is, hereby, **REVERSED** and the Department is ORDE RED to initiate a review of the application for

MA and Retro MA dated if not done previously, to determine

Claimant's non-medical eligibility. The D epartment shall inform Claim ant of the

determination in writing. A review of this case shall be set for

Aaron McClintic Administrative Law Judge for Maura Corrigan, Director Department of Human Services

Date Signed: 02/21/2013

Date Mailed: <u>02/22/2013</u>

NOTICE: Administrative Hearings may order a rehearing or reconsider ation on either its own motion or at the request of a party within 30 days of the mailing date of this Decis ion and O rder. Administrative Hearings will not or der a rehearing or reconsideration on the Department's moti on where the final decision cannot be implemented within 60 days of the filing of the original request.

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 ti mely 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 e rror, 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

AM/kl

