

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

IN THE MATTER OF:

████████████████████
████████████████████
████████████████████

Reg. No.: 2013 24819
Issue No.: 2009
Case No.: ██████████
Hearing Date: May 15, 2013
County: Wayne (82)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

AMENDED HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, an in-person hearing was held on May 15, 2013 from Detroit, Michigan. Participants on behalf of Claimant included the Claimant and ██████████, the Claimant's Authorized Hearing Representative ("AHR"). Participants on behalf of the Department of Human Services (Department) included ██████████ ES.

ISSUE

Whether the Department properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) program?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On September 18, 2012, Claimant applied for MA-P and retro MA-P (August 2012).
2. On October 15, 2012, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant's AHR a notice of the Notice of Case Action dated October 18, 2012 denying the Claimant's MA-P application. Exhibit 1

4. On January 15, 2013 Claimant's AHR submitted to the Department a timely hearing request. Exhibit 2
5. March 26, 2013 the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.
6. Claimant at the time of the hearing was [REDACTED] years old with a birth date of [REDACTED] [REDACTED] Claimant was 5'6" and weighed 280 pounds.
7. Claimant completed education through the 3rd grade and does not read.
8. Claimant has employment history working for a temporary unskilled labor company doing heavy work until he was injured in [REDACTED] The Claimant was employed by a waste management company performing garbage collection and the Claimant also worked as a general laborer and performed general industrial work lifting between 50 to 150 pounds. The Claimant has not worked since 2003.
9. Claimant's limitations have lasted for 12 months and are expected to continue for 12 months or more.
10. Claimant alleges physical disabling impairments due to high blood pressure, chronic heart failure, obesity, dizziness and shortness of breath, knee pain and chronic kidney disease (stage 3).
11. The Claimant has not alleged any mental disabling impairments.
12. Claimant has significant limitations on physical activities.

CONCLUSIONS OF LAW

MA-P 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 MA-P 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 (RFT).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. Under SSI, 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 set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

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 classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment

or combination of impairments is “severe” within the meaning of regulations if it significantly limits an individual’s ability to perform basic work activities. An impairment or combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the claimant’s residual functional capacity. 20 CFR 404.1520(e). An individual’s residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, the trier must consider all of the claimant’s impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the claimant has the residual functional capacity to do his/her past relevant work, then the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual’s residual functional capacity is considered in determining whether disability exists. An individual’s age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Claimant alleges physical disabling impairments due to high blood pressure, chronic heart failure, obesity, dizziness and shortness of breath, knee pain and chronic kidney disease (stage 3). A summary of the claimant’s medical evidence presented at the hearing and the new evidence presented follows.

On [REDACTED] the Claimant was hospitalized for a four day stay due to his heart conditions. The impression and plan noted peripheral arterial disease with ischemic left foot, (no left dorsal pedis pulse, left ankle and dorsum of foot cold to the touch). The Claimant was in severe pain. The plan called for a balloon angioplasty to

post., tibial, plantar arch, dorsalis pedis and tibials anterior arteries with good result. Chronic Kidney disease, stage IV, cr (creatinine) at baseline, recommended gentle hydration after the catheter, monitor cr. Avoid nephrotoxins, CHF systolic and diastolic Ejection Fraction 20%, compensated, Left ventricle thrombus,

██████████ final report patient presenting with critical limb ischemia. Leg swelling was improved and able to move foot passively without any pain. The impression and plan was history of chronic heart failure, with severe Class 1 subacute systolic HF LVEF 20%, severe left ventricular systolic dysfunction with LV thrombus, chronic renal failure improved.

██████████ Claimant was seen at hospital reporting marked shortness of breath and positive troponins, with ejection fraction of 20%. The left ventricle also has thrombus at the left apex. The report noted Claimant is morbidly obese with sleep apnea. His creatine was 2.4 which predisposes him to renal insufficiency and possible renal failure and the need for dialysis. The examiner recommended a heart catheterization. The report noted that staff was to be consulted for coronary bypass surgery. The assessment noted acute kidney injury on chronic kidney disease stage III. coronary artery disease, elevation myocardial infarction. Urine drug screen positive for cocaine. Congestive heart failure. Anemia, obesity, hypertension and hyperglycemia, possible type 2 diabetes.

On ██████████ while hospitalized, an ultrasound of the Claimant's kidneys was performed. As regards right kidney, no evidence of a renal cyst, mass or hydronephrosis. Doppler duplex analysis shows a resistive index of 0.68 in right kidney, (normal values 0.40 – 0.70). Left kidney has no evidence of a renal mass or hydronephrosis. A 4x6mm calculus is seen in renal sinus. Doppler duplex analysis shows a resistive index of 0.66.

On ██████████ ██████████ ██████████ an adenosine stress test was performed. Baseline electrocardiogram (ECG) normal, sinus rhythm, T-wave inversion in lateral leads with adenosine infusion the electrocardiogram did not show ST-segment changes. The impression was: Functional capacity not assessed, baseline pleuritic-type chest pain, blood pressure response, appropriate with normal baseline, adenosine stress ECG inconclusive, Arrhythmias, Rare PVC, Stress/Rest myocardial perfusion study, abnormal study with cardiomyopathy, no ischemia. The inferior defect might be due to attenuation, however areas of fibrosis/infarct cannot be excluded. The left ventricular dilation at baseline, with resting ejection fraction of 20% and post stress of 21%. A second heart catheterization was recommended.

On ██████████ a final consulting report was completed noting severe systolic dysfunction with ejection fraction of 15% to 20% and that Claimant demonstrated signs of diastolic dysfunction with contributory etiology of worsened acute kidney injury due to diuretic use.

Final report acute non- T segment elevation myocardial infarction, chest pain. An adenosine stress test was performed on and perfusion was normal except for mild nonreversible inferior defect which is not severe enough to meet the criteria for abnormality by quantitative analysis. Claimant was discharged home improved but with required follow up.

Here, Claimant has satisfied requirements as set forth in steps one and two of the sequential evaluation as he is not employed and his impairments have met the Step 2 severity requirements.

In addition, the Claimant's impairments do meet a listing as set forth in Appendix 1, 20 CFR 416.926. Listings 4.02 Chronic Heart Failure requires the following to meet the listing.

4.02 Chronic heart failure while on a regimen of prescribed treatment, with symptoms and signs described in 4.00D2. The required level of severity for this impairment is met when the requirements in *both A and B* are satisfied.

A. Medically documented presence of one of the following:

1. Systolic failure (see 4.00D1a(i)), with left ventricular end diastolic dimensions greater than 6.0 cm or ejection fraction of 30 percent or less during a period of stability (not during an episode of acute heart failure); or
2. Diastolic failure (see 4.00D1a(ii)), with left ventricular posterior wall plus septal thickness totaling 2.5 cm or greater on imaging, with an enlarged left atrium greater than or equal to 4.5 cm, with normal or elevated ejection fraction during a period of stability (not during an episode of acute heart failure);

AND

B. Resulting in one of the following:

1. Persistent symptoms of heart failure which very seriously limit the ability to independently initiate, sustain, or complete activities of daily living in an individual for whom an MC, preferably one experienced in the care of patients with cardiovascular disease, has concluded that the performance of an exercise test would present a significant risk to the individual; or
2. Three or more separate episodes of acute congestive heart failure within a consecutive 12-month period (see 4.00A3e), with evidence of fluid retention (see 4.00D2b (ii))

from clinical and imaging assessments at the time of the episodes, requiring acute extended physician intervention such as hospitalization or emergency room treatment for 12 hours or more, separated by periods of stabilization (see 4.00D4c); or

3. Inability to perform on an exercise tolerance test at a workload equivalent to 5 METs or less due to:

a. Dyspnea, fatigue, palpitations, or chest discomfort; or

b. Three or more consecutive premature ventricular contractions (ventricular tachycardia), or increasing frequency of ventricular ectopy with at least 6 premature ventricular contractions per minute; or

c. Decrease of 10 mm Hg or more in systolic pressure below the baseline systolic blood pressure or the preceding systolic pressure measured during exercise (see 4.00D4d) due to left ventricular dysfunction, despite an increase in workload; or

d. Signs attributable to inadequate cerebral perfusion, such as ataxic gait or mental confusion.

In the present case, Claimant has been diagnosed with high blood pressure, chronic heart failure, obesity, dizziness and shortness of breath, knee pain and chronic kidney disease (stage 3).

The medical evidence of record indicates that since [REDACTED] the Claimant has had a chronic heart failure diagnosis and the two most recent hospitalizations, in [REDACTED] and [REDACTED] the Claimant's ejection fraction was 20% and 15% to 20%. In [REDACTED] 12 the Claimant was hospitalized and could not complete an Adenosine stress test due to chest pain which per protocol required cessation of the test. The medical evidence presented demonstrates that 4.02 A(1) systolic failure is met and B(3)(a), based upon his inability to perform on an exercise tolerance test at a workload equivalent to 5 METs or less due to chest pains.

At the Hearing the Claimant testified that at the end of the week he was scheduled for coronary triple bypass surgery. Claimant attended the hearing and was noted and observed to be limping, using a cane and obese. The Claimant's BMI based on a reported weight of 280 and height of 5'6" is 45.2.

Claimant credibly testified to the following symptoms and abilities: the Claimant could not walk more than 20 feet and was required to stop due to shortness of breath. The Claimant could stand 20 minutes and sit only 20 to 30 minutes due to spasm in his foot and leg due to deep vein thrombosis and surgery in [REDACTED]. At the hearing it

was observed that the Claimant did have to sit and stand alternatively during the hearing. The Claimant cannot bend at the waist or touch his toes due to dizziness. While taking a shower he must rest and feels a continuous heavy weight on his chest. The Claimant cannot climb stairs after 3 steps. The heaviest weight the Claimant can lift is less than 10 pounds.

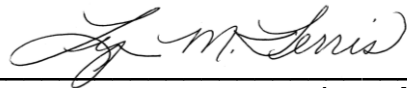
Based upon these functional limitations and the medical evidence presented it is determined that the Claimant has demonstrated that the listing 4.02 is met and therefore is found disabled at Step 3 with no further analysis required.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of August 2012.

Accordingly, the Department's decision is hereby REVERSED

1. The Department is ORDERED to initiate a review of the application dated September 18, 2012, the Claimant's retro application (August 2012) if not done previously, to determine Claimant's non-medical eligibility.
2. A review of this case shall be set for June 2014.



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

Date Signed: June 3, 2013

Date Mailed: June 3, 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

LMF/cl

cc:

[REDACTED]
[REDACTED]
[REDACTED]
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