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

**IN THE MATTER OF:**

Reg. No: 201316415
Issue No: 2009

[redacted]

[redacted]

**ADMINISTRATIVE LAW JUDGE:** Aaron McClintic

## DECISION AND ORDER

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 on [redacted] Claimant appeared and testified. Claimant's Authorized Hearings Representative, [redacted] also appeared. The Department was represented by [redacted]

## ISSUE

Did the Department properly deny Claimant's Medical Assistance (MA-P) program application?

## FINDINGS OF FACT

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

1. Claimant applied for MA-P on [redacted]
2. The Medical Review Team denied the application on [redacted]
3. Claimant filed a request for hearing on [redacted], regarding the MA denial.
4. An in-person hearing was held on [redacted]
5. On [redacted], the State Hearing Review Team denied the application because the medical evidence or record indicates that Claimant despite his impairments Claimant retains the capacity to perform light work.
6. Claimant is 6' 2" tall and weighs 275.

7. Claimant is 50 years of age.

8. Claimant's impairments have been medically diagnosed as fractured back, sacrum and left arm.

9. Claimant has the following symptoms: pain and fatigue.

10. Claimant completed a GED.

11. Claimant is able to read, write, and perform basic math skills.

12. Claimant is not workin g. Claimant last worked in [redacted] as a fire watch iron worker for 5 days. Cl aimant previously worked full time as an iron worker.

13. Claimant lives alone.

14. Claimant testified that he cannot perform some household chores.

15. Claimant takes the following prescribed medications:

    a. [redacted]
    b.

16. Claimant testified to the following physical limitations:

    i. Sitting: 15-20 minutes
    ii. Standing: 5 minutes
    iii. Walking: ½ mile
    iv. Bend/stoop: some difficulty
    v. Lifting: 10-20 lbs.
    vi. Grip/grasp: no limitations

17. Claimant treating phy sician, [redacted] completed the following statement dated [redacted] "[redacted] is slowly progressing. He has finished PT and discharged to home ex ercise program. Needs to rebuil d core strength and endurance to be able to return to work."

18. Claimant testified that he has s een some improvement in his physical capabilities and that he has been exer cising with his tool belt on with 30-35 pounds of weight.

## CONCLUSIONS OF LAW

The regulations governing the hearing and a ppeal 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 ap plicant wh o

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 Medical 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 Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the MA-P program. 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.

Federal regulations require 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 individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, 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 the 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 considering whether the Claimant is considered disabled is whether the severity of the impairment. In order to qualify the impairment

must be considered s evere which is defined as an impairment which significantly limits an ind ividual's p hysical or mental ab ility to per form 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 ev idence of record supports a finding t hat Claimant has signific ant physic al and mental limitati ons upon Claimant's abili ty 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 t hat the Claimant's medical rec ord does not support a fi nding that the Claimant's impai rment(s) is a "lis ted impairment" or equal to a listed impairment. Se e Appendix 1 of Subpart P of 20 CFR Part 404, Part A. Listing 1.04 was considered.

The person claiming a physica l 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 adjus tments, if a m ental disability is being alleg ed. 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 cons idered is whet her the Claimant has t he ability to perform work previously performed by t he Claimant within the past 15 y ears. The trier of fact must determine whet her the im pairment(s) presented prevent the Claimant from doing past relevant work. In the pr esent case, the Claimant 's past employment was as an iron worker. Working as an iron worker as described by Claimant at hearing would be considered heavy wo rk. Claimant would not be able to perform his pas t

relevant work because he is not able to do the requisite sitting, standing, walking, lifting for heavy exertional work. This Administrative Law Judge will continue through step 5.

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

1. residual functional capacity defined 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 significant numbers in the national economy which the claimant could perform 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 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.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like 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 work 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 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.... 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 weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do

heavy work, 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 analysis, the Claimant has already established a prima facie case of disability. *Richardson v Secretary of Health and Human Services*, 732 Fd2 962 (6th Cir, 1984). Moving forward the burden of proof rests with the state to prove by substantial evidence that the Claimant has the residual function capacity for substantial gainful activity.

After careful review of claimant's extensive medical record and the Administrative Law Judge's personal interaction with claimant at the hearing, this Administrative Law Judge finds that claimant retains the capacity to perform work at least on the light exertional level. The Claimant is advanced age at age 50. 20 CFR 416.963. Claimant's previous work has been unskilled. Federal Rule 20 CFR 404, Subpart P, Appendix 2 contains specific profiles for determining disability based on residual functional capacity and vocational profiles. Under Table 1, Rule 202.11 the Claimant is not disabled for the purposes of MA-P. Claimant's testimony regarding his limitations and ability to sit, stand, walk, lift and carry are not supported by substantial evidence. Claimant's appeal could have been denied on durational grounds also as he has shown steady improvement since his accident and continues to show improvement.

## DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is not medically disabled for the purposes of MA-P.

Accordingly, the Department's decision is hereby **AFFIRMED**.

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

Date Signed: 04/18/2013

Date Mailed: 04/18/2013

**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

AM/kl

cc: [redacted]