

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

**IN THE MATTER OF:**

Reg. No: 20138992

Issue No: 2009

**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]. The Claimant appeared and testified. Claimant's Authorized Hearings Representative, [REDACTED], also appeared for the Claimant. 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], with a request for Retroactive Coverage back to [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 Claimant's retains the capacity to perform a wide range of light work.
6. Claimant is 59 years of age.

7. Claimant's impairments have been medically diagnosed as abdominal aortic aneurysm, low back pain, heart problems, hyperlipidemia, and arthritis.
8. Claimant has the following symptoms: pain, fatigue, shortness of breath, cough, and insomnia.
9. Claimant completed high school and some college.
10. Claimant is able to read, write, and perform basic math skills.
11. Claimant is not working. Claimant last worked in [REDACTED] repairing boats.
12. Claimant lives with his girlfriend.
13. Claimant takes the following prescribed medications:
  - a. [REDACTED]
  - b. [REDACTED]
14. Claimant testified to the following physical limitations:
  - i. Sitting: 30 minutes
  - ii. Standing: 30 minutes
  - iii. Walking: 100 feet
  - iv. Bend/stoop: difficulty
  - v. Lifting: 20 lbs.
  - vi. Grip/grasp: no limitations
15. Claimant testified to experiencing pain at a high level of 4-5 on an every day basis with some pain always present at a low level of 2.
16. Pulmonary Function Testing showed FVC of 4.07 and FEV1 of 2.55 before bronchodilator and FVC of 4.32 and FEV1 of 2.68 FEV1 10 minutes after bronchodilator.
17. A consultative physical examination dated [REDACTED], states the following under summary: "The claimant is a 59 year old male whose upper extremities have normal function, strength, and range of motion. Lower extremities also have normal function, strength and range of motion. The claimant's principle limiting factor at this point is shortness of breath. The claimant is able to shower and dress independently and do household chores. The claimant seems capable of non-strenuous tasks done in a relatively sedentary type of setting. The claimant's ability to perform work-related activities such as bending, stooping, lifting, walking, squatting, carrying, and traveling as well as pushing and pulling heavy objects is moderately impaired due to the findings above."

## 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 opportunity 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 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 at 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 severe which is defined as an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Examples of these include:

1. Physical functions such as walking, 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 walking, 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 analysis, 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. Listings 3.02 and 1.04 were considered.

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 clinical/laboratory findings, diagnosis/prescribed 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 CFR 416.913. A conclusory statement by a physician 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 analysis to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 years. 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 tree service worker. Working as a tree service worker as described by the Claimant at hearing would be considered medium work. The Claimant's impairments would prevent him from doing past relevant 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 from 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 (6<sup>th</sup> 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 the medical evidence presented and Claimant's statements, and considering the Claimant in the most restrictive circumstances this Administrative Law Judge finds that Claimant would be able to perform work at least work on the light exertional level.


This Administrative Law Judge finds that Claimant is capable of the requisite sitting, standing and walking for a light exertional job. The Claimant is approaching advanced age at age 59. 20 CFR 416.963. Claimant's previous work has been semiskilled but his skills are not transferable. 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 and SDA. Claimant's testimony regarding his limitations and ability to sit, stand, walk, lift and carry are not supported by substantial evidence.

### **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 and program.

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

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Aaron  
Administrative  
for  
Department

  
McClintic  
Law Judge  
Maura Corrigan, Director  
of Human Services

Date Signed: 03/19/2013

Date Mailed: 03/20/2013

**NOTICE:** Administrative Hearings 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. Administrative Hearings 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.

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:

