

**ALONGI JERRA 2013 52536STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

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Reg. No.: 2013 3563
Issue No.: 2009
Case No.: ██████████
Hearing Date: January 24, 2013
DHS County: Wayne (19)

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 held in Inkster, Michigan, on January 24, 2013. The Claimant appeared and testified. ██████████ the Claimant's Authorized Hearing Representative (AHR), also appeared. ██████████ Medical Contact Worker, 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. The Claimant submitted an application for public assistance seeking MA-P benefits on April 26, 2012 with a retro application for retroactive coverage for January 2012.
2. On July 9, 2012, the Medical Review Team ("MRT") found the Claimant not disabled.
3. The Department notified the Claimant of the MRT determination on July 9, 2012.
4. On September 27, 2012, the Department received the Claimant's timely written request for hearing.

5. On November 21, 2012 the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued on February 25, 2013 to obtain new medical evidence and updated medical examinations. The new evidence provided at the hearing was also received.
7. The new medical evidence was submitted to the State Hearing Review Team on April 5, 2013.
8. On June 20, 2013 the State Hearing Review Team found the Claimant not disabled.
9. The Claimant alleges physical disabling impairments due to HIV, cellulitis of legs and knees, chronic infections, pain in lower extremities, pain and swelling in his left ankle due to infection, swollen face with fluid pockets and Hepatitis C.
10. The Claimant has not alleged any mental disabling impairment.
11. At the time of hearing, the Claimant was ■ years old with an ■ birth date. Claimant is 5’8” in height; and weighed 145 pounds.
12. The Claimant has a high school education. The Claimant’s past employment is as a cashier, a caregiver for room and board, worked for a landscaping company and worked as a cashier for a fast food chain.
13. The Claimant’s impairments have lasted or are expected to last 12 months in duration.

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
6. 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 impairments due to HIV, cellulitis of legs and knees, chronic infections, pain in lower extremities, pain and swelling in his left ankle due to infection, swollen face and Hepatitis C.

The Claimant has not alleged any mental disabling impairments.

A summary of the medical evidence follows.

On [REDACTED] the Claimant presented with pain in his right leg and swelling of both knees with redness progressing proximally and distally. The Claimant was hospitalized for an extended stay until [REDACTED]. The initial assessment was cellulitis right leg with marked leukocytosis. Blood cultures likely streptococcus with possible underlying abscess, early necrotizing fasciitis and septic knee. HIV advanced per testing. The discharge summary was right lower lymphedema cellulitis of the leg, with HIV immunocompromised. The debridement of the knee was performed and multiple abscesses requiring multiple surgical interventions with drainage. The Claimant had an extended stay of almost one month with multiple surgical interventions.

The Claimant was hospitalized on [REDACTED] until [REDACTED] with a fever of 103 degrees and pain in left ankle and right knee. Discharge diagnosis was septic arthritis, left ankle with incision and drainage twice, secondary to methicillin and oxacillin resistant staphylococcus aureus. CD4 was 30. The Claimant tested positive for HIV. Also noted acute renal failure, septic lung emboli and chronic discitis T3 and T4, HIV, hepatitis C and hypertension. The Claimant received a blood transfusion due to drop in hemoglobin. The Claimant also had cavitory lesions in the lungs with impression of septic emboli. The Claimant was seen for cellulitis. The Claimant had left foot surgery two weeks prior to this admission. The hospital notes indicated that Claimant has medical history of HIV/AIDS but is not very compliant. The report notes former alcohol abuse. CT of right knee showed right knee effusion. Impression was fever at home with left ankle and right knee pain and HIV non-compliant. During this hospitalization the Claimant was seen for depression. The assessment was depressive disorder, not otherwise specified, rule out bipolar disorder, alcohol abuse with binge drinking. The Claimant had a surgery to drain the left ankle of fluid. A CT of the chest was performed with impression of septic emboli to the lung and spine, rule out endocarditis and Methicillin resistant staphylococcus aureus, acute arthritis. A CT of the thoracic spine noted possible healed discitis. After stabilization the Claimant was transferred to sub-acute rehab and given IV daily. The Claimant was also examined for acute kidney injury

and was to be ruled out for acute interstitial nephritis or prerenal azotemia and acute tubular necrosis and anemia. During the Claimant's stay he received a blood transfusion due to hemoglobin count. The discharge diagnosis was septic arthritis, left ankle with incision and drainage done two times, methicillin-resistant staphylococcus aureus bacteremia, septic emboli lung, acute renal failure, improving, chronic discitis T3 – T4 level. HIV acquired immune deficiency syndrome, Hepatitis C and hypertension. The records note that the claimant drinks a pint of alcohol weekly.

On [REDACTED] the Claimant was seen at the hospital and was positive for hematemesis (vomiting blood) with history of alcohol abuse, most likely bleeding esophageal varices. The Claimant underwent an endoscopy with no evidence of bleeding, treated with band ligation. The antral biopsy showed no diagnostic abnormality. The ECG results showed sinus tachycardia, left anterior fascicular block, abnormal ECG. The Claimant was positive for bilateral leg pain.

The Claimant was seen for an office visit on [REDACTED] for follow up for his HIV. At the time the notes indicate that the Claimant was fatigued, and right leg was swollen, decreased appetite. The Claimant was noted to be compliant with current therapy and there was dramatic improvement, due to resumption of HAART which caused major deterioration in Claimant's health.

The Claimant was hospitalized from [REDACTED] through [REDACTED]. The discharge diagnosis was acute blood loss anemia secondary to varicocele bleed, status post EGD and banding, alcoholic intoxication, Hepatitis C, HIV and history of alcohol abuse. Prior to admission the patient had been drinking one pint of vodka daily for three weeks. Esophagogastroduodenoscopy was performed due to upper digestive tract. Upon presenting at the hospital the Claimant was vomiting blood. Claimant was given Ativan for anxiety. Final impressions were hematemesis and acute alcohol intoxication.

A Medical Examination report was completed by the Claimant's treating physician and infectious disease specialist. The diagnosis was AIDS and Hepatitis C. The history of impairments noted hospitalization from [REDACTED] through [REDACTED] due to leg abscesses. The examining treater had seen the Claimant since 2005. A general observation was that the Claimant was thin and chronically ill and oral thrush. Under mental a note was made poor concentration. The exam noted that the Claimant was deteriorating. The following limitations were imposed, occasionally lifting less than 10 pounds, standing and/or walk less than two hours in 8 hour work day, a walker was deemed medically necessary, the Claimant could perform simple grasping, reaching, pushing and pulling with both hands and no fine manipulation with right only. No operation of foot controls with either foot. The report also noted that the Claimant was limited in social interaction.

Medical evidence presented tests demonstrating CD4 counts of 11 on several occasions. Generally, when the CD4 count is less than 200 the susceptibility of opportunistic infection is greatly increased. SSA Listing, 14.00 Immune System Disorders (E) (2) CD4 Tests.

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 some medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. The medical evidence has established that 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.

Listing 14.08 Human Immunodeficiency Virus HIV was reviewed and it was found that the Claimant did not meet the listing, although several admissions were made for serious problems due to infection, the listing was not met.

The fourth step in analyzing a disability claim requires an assessment of the claimant's 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 past employment is as a cashier, a caregiver for room and board, worked for a landscaping company and worked as a cashier for a fast food chain. The cashier work would be light unskilled work. The work as a caregiver would be light unskilled work as the Claimant did housekeeping and cooking. Both of these jobs required moving about and in the restaurant job standing most of the day.

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

The Claimant credibly testified that he can stand 15 minutes due to pain and fatigue, and can sit up to an hour. Claimant can only walk short distances, about a block, due to problems with infections in his leg and ankle and pain and fatigue. The heaviest weight he can carry is 5 to 10 pounds but he was not certain as he avoids carrying anything heavy. Claimant cannot drive for any distance. Based upon the medical examination by Claimant's treating doctor these limitations were verified on examination and limitations were imposed as follows. Occasionally lifting less than 10 pounds, standing and/or walk less than two hours in 8 hour work day, a walker was deemed medically necessary, the Claimant could perform simple grasping, reaching, pushing and pulling with both hands and no fine manipulation with right only. No operation of foot controls with either foot. The report also noted that the Claimant was limited in social interaction.

Based upon this objective medical evidence and limitations the Claimant could no longer perform work as a caregiver or as a cashier or lawn work pushing a mower.

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; thus, the fifth step in the sequential analysis is required.

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 ■ years old and, thus, is considered to be younger individual for MA purposes. The Claimant has a high school education and a past work history of unskilled work. 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).

In this case the evidence reveals that the Claimant has had numerous hospitalizations due to infections in the leg and ankles, requiring surgical interventions and treatment of infection. The laboratory work on several occasions reported a CV4 count of 11 demonstrating the Claimant's susceptibility to infection. The Claimant's treating doctor for infectious disease and HIV infection found he was deteriorating and imposed limitations restricting the Claimant to work categorized as less than sedentary. The Doctor has treated the Claimant since [REDACTED]

In this case the evidence and objective findings reveal that the Claimant suffers recurring infections with hospitalization for infection and IV treatment with antibiotics, difficulty and pain in legs and ankle due to repeated surgeries while hospitalized and Hepatitis C. The Claimant's treating physician found him thin and fatigued on examination during a period of medication compliance with a deteriorating status. Although evidence of alcohol abuse was presented on one hospital admission with notes of Claimant's continued alcohol use, it is determined that alcohol is not material to this determination of disability as the Claimant will continue to suffer infections due to his HIV diagnosis and CD4 counts which demonstrate his susceptibility to recurrent infections.

The objective medical evidence provided by the Claimant's longstanding treating doctor's evaluation places the Claimant at the less than sedentary activity level. Deference was given to the opinion of the treating physician. The total impact caused by the physical impairment suffered by the Claimant, and his deteriorating status and pain when considered together require that a determination that he cannot reasonably be able to sustain substantial gainful employment. In doing so, it is found that the combination of the Claimant's physical impairments have a major impact on his ability to perform and sustain performance of basic work activities. Accordingly, it is found that the Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a). After review of the entire record, and in consideration of the Claimant's age, education, work experience and residual functional capacity it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

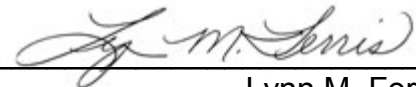
It is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant disabled for purposes of the MA-P.

Accordingly, It is ORDERED:

1. The Department is ordered to initiate processing of the Claimant's MA-P, Retro MA-P application dated April 26, 2012 and retro application (January 2012) and award required benefits, provided Claimant meets all non-medical eligibility requirements.
2. The Department shall initiate review of the Claimant's disability case in July 2014 in accordance with Department policy.



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

Date Signed: July 25, 2013

Date Mailed: July 25, 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 mailing 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.

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CC:

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