

**STATE 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 31860
Issue No.: 2009
Case No.: ██████████
Hearing Date: June 12, 2013
County: Oakland (04)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, an in person hearing was held on June 12, 2013 from Detroit, Michigan. Participants on behalf of Claimant included the Claimant and ██████████, the Claimant's Authorized Hearing Representative. 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 August 17, 2012, Claimant applied for MA-P
2. On December 6, 2012 the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant a Notice of Case Action dated on December 12, 2012 denying the Claimant's MA-P application. Exhibit 1
4. On February 22, 2013 Claimant submitted to the Department a timely hearing request.

5. April 9, 2013 the State Hearing Review Team (SHRT) found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on June 17, 2013.
7. The new evidence as Ordered was sent to the State Hearing Review Team on August 16, 2013. On October 14, 2013 the State Hearing Review Team found the Claimant not disabled and denied Claimant's request.
8. At the time of the hearing the Claimant was [REDACTED]. The Claimant is now [REDACTED] years old with a birth date of [REDACTED]. The Claimant was 6'4" in height and weighed 285. Claimant completed education through the 12th grade.
9. Claimant has employment experience as a furniture mover and doing rough finish carpentry. Both of these jobs required regularly lifting 100 to 150 pounds and Claimant was on his feet most of the day. The Claimant was also required to climb ladders in the carpentry job.
10. Claimant's limitations have lasted for 12 months or more.
11. Claimant alleges physical disabling impairments due to severe pain in his back and knee, swelling in his feet, and limited range of motion in his back due to his kidney surgery and ongoing low back pain and hypertension.
12. The Claimant has alleged mental disabling impairments due to social anxiety. The Claimant has not treated for this mental condition.
13. Claimant has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, stooping, pushing and pulling.

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).

The Claimant has alleged physical disabling impairments of severe pain in his back and knee, swelling in his feet, and limited range of motion in his back due to his kidney surgery and ongoing low back pain.

The Claimant has alleged mental disabling impairments due to social anxiety.

A summary of the medical evidence follows.

The Claimant was seen by his Nephrologist in [REDACTED] and a DHS 49 was completed. The treating doctor imposed restrictions, with no lifting of more than 10 pounds frequently and limited standing and walking to at least 2 hours in an 8 hour work day, and that due to an open nephrectomy for a huge kidney tumor, the Claimant's back and side on left are in pain. This evaluation was 6 months post-nephrectomy.

A consultative examination was also conducted in [REDACTED] which imposed the following limitations. Occasionally lifting less than 10 pounds and standing and walking less than 2 hours in an 8 hour work day. The Claimant could not operate foot controls with either foot. The evaluator also found Claimant could not reach or push or pull with either hand and that the limitations would last more than 90 days. The examiner noted muscle spasm over lower back with difficulty in bending and position change. Pain radiation to buttock area and legs, with facial tics. Decreased rotation to sides. Left knee joint with tenderness on palpation and positive effusion. Range of motion decreased with collateral ligament tenderness with anterior/posterior drawer. Bilateral knee crepitation severe. Knee reflexes decreased bilaterally more on left. Diagnosis was essential hypertension, degeneration of lumbar or lumbosacral intervertebral disc, osteoarthritis localized, primary lower leg.

Another internal medicine doctor notes in [REDACTED], based on the extensive surgery due to kidney mass, that Claimant had limitations on lifting and could walk/stand only 3 hours out of an 8 hour work day. The remainder of the limitations were not decipherable.

In [REDACTED] the Claimant had acute appendicitis which ruptured and umbilical hernia repair. During this hospitalization a complex renal cyst was incidentally found. The Claimant was discharged after a 2-day hospital stay.

The Claimant underwent a nephrectomy in [REDACTED] and had a large 13 cm mass with radical nephrectomy for renal cell carcinoma. Follow up CT scan showed no evidence of recurrence. The Claimant is obese, with BMI of 37.5. The tumor was confined to the kidney. The Claimant's hospital stay lasted 8 days.

A mental status examination was conducted on [REDACTED]. The examiner's diagnosis was social anxiety and depressive disorder, and was 55 to 60. The Claimant was found to be overall capable of paying attention and following instructions. The primary problems were noted to be physical.

An earlier consultative examination was conducted [REDACTED] [REDACTED] [REDACTED]. At the examination the Claimant's range of motion on flexion was only 45 degrees and extension was 0 degrees. Noted mild difficulty with heel-toe walking and difficulty squatting and pain and crepitous of right knee. Noted decreased range of motion in lumbar spine.

Here, Claimant has satisfied requirements as set forth in steps one, two and three of the sequential evaluation. However, Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Listing 1.04 Disorder of the Spine, 12.06 Anxiety Related Disorders, were considered and were found not to be met. Therefore, vocational factors will be considered to determine claimant's residual functional capacity to do relevant work.

In the present case, Claimant has been diagnosed with physical impairments due to severe pain in his back and knees, swelling in his feet and limited range of motion in his back due to his kidney surgery and ongoing low back pain and hypertension. The claimant also has mental impairments diagnosed as social anxiety. Claimant has a number of symptoms and limitations, as cited above. As a result of these conditions. Claimant credibly testified to the following symptoms and abilities: pain, in legs and back, can stand 5 to 10 minutes, can walk less than a block sometimes only 50 to 60 feet, cannot lift anything over 10 pounds and can carry only 5 pounds. His ability to sleep is limited and is restless at night due to pain, constant pain in his back. Claimant credibly testified that he can sit 30 minutes. The Claimant also becomes breathless climbing a few stairs making it hard to breathe and fatiguing. Lastly, Claimant is tired a lot and fatigued and stays home most of the time. The claimant described his social anxiety as making it difficult to be in crowds and do everyday activities, such as go to the grocery store.

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, Claimant's past employment was as a furniture mover and finish rough carpentry. Claimant's credible testimony was that in these jobs he was required to lift and carry objects weighing at least 100 pounds and was on his feet most of the day. The Claimant's credible testimony was that he could no longer lift this amount of weight, cannot stand all day and cannot climb ladders.

This Administrative Law Judge finds, based on the medical evidence summarized above and objective, physical, and psychological findings, that Claimant is not capable of the physical activities required to perform any such positions and cannot perform past relevant work, and thus a Step 5 analysis is required 20 CFR 416.920(e).

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).

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). At the time of hearing, the Claimant was ■ years old and, thus, considered to be considered a younger individual. The Claimant has the equivalent of a 12th grade education. 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).

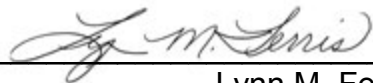
While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines 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). Individuals approaching advanced age (age 50-54) may be significantly limited in vocational adaptability if they are restricted to sedentary work. 20 CFR 416.963(d).

After a review of the entire record, including the Claimant's testimony and medical evidence presented, it is determined that Claimant's impairments have a major effect on his ability to perform even basic work activities. The objective medical evidence provided by the Claimant's medical history and medical examination reports place the Claimant at the less than sedentary activity level. The total impact caused by the physical impairment suffered by the Claimant must be considered. In doing so, it is found that the combination of the Claimant's physical impairments has a major impact on his ability to perform 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.

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

Accordingly, the Department's decision is hereby REVERSED.

1. The Department is ORDERED to initiate a review of the application dated August 17, 2012 and any retro application if not done previously, to determine Claimant's non-medical eligibility.
2. A review of this case shall be set for November 2014.



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

Date Signed: November 7, 2013

Date Mailed: November 7, 2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

LMF/cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]