

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

IN THE MATTER OF:

██████████
██
██

Reg. No.: 2013 14491
Issue No.: 2009
Case No.: ██████████
Hearing Date: February 28, 2013
County: Wayne (18)

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 following Claimant's request for a hearing. After due notice, an in-person hearing was held on February 28, 2013 from Taylor, Michigan. Participants on behalf of Claimant included the Claimant and ██████████ the Claimant's Authorized Hearing Representative ("AHR"). A witness, ██████████, also appeared on Claimant's behalf. Participants on behalf of the Department of Human Services (Department) included ██████████, Medical Contact Worker.

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 April 25, 2012, Claimant applied for MA-P and retro MA-P (February 2012).
2. On October 2, 2012, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant's AHR a Notice of Case Action dated October 5, 2012 denying the Claimant MA-P application. Exhibit 1
4. On November 29, 2012 Claimant's AHR submitted to the Department a timely hearing request.

5. On January 23, 2013 the State Hearing Review Team (“SHRT”) found the Claimant not disabled and denied Claimant’s request.
6. An Interim Order was issued on March 4, 2013 accepting new evidence submitted on the Claimant’s behalf at the hearing and additional evidence to be obtained by the Claimant’s AHR.
7. The new evidence was provided to the State Hearing Review Team (SHRT) on May 3, 2013 and the SHRT denied disability on July 11, 2013.
8. Claimant at the time of the hearing was [REDACTED] years old with a birth date of [REDACTED]. Claimant was 5’6” and weighed 288 pounds.
9. Claimant completed a high school education.
10. Claimant has employment experience working as a general laborer installing vinyl siding, concrete installation and breaking concrete as well in preparation of installation. Claimant last worked in 2007 in shipping and receiving at a sausage manufacturer loading food on pallets.
11. Claimant alleges physical disabling impairments due to high blood pressure, chronic heart failure, obesity, and back pain due to herniated disc with numbness in tingling in both feet.
12. Claimant has alleged mental disabling impairments of depression and anxiety.
13. The Claimant’s impairments have lasted or are expected to last 12 months duration and longer.

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 alleges physical disabling impairments due to high blood pressure, chronic heart failure with triple bypass surgery, obesity, ankle and foot swelling and numbness and tingling and back pain with herniated disc in lumbar spine. The Claimant has alleged mental disabling impairments due to depression and anxiety. A summary of

the Claimant's medical evidence presented at the hearing and the new evidence presented follows.

The Claimant underwent a triple heart bypass in [REDACTED] after myocardial infarction, multi vessel coronary artery disease.

The Claimant's primary care doctor completed a DHS 49 on [REDACTED]. The diagnosis was hypertension, coronary artery disease with heart attack and bypass surgery, hyperlipidemia, low back pain, obesity, GERD and tobacco abuse, and depression. The exam noted apprehensive unstable gait, inflexible, straight leg raising positive bilaterally, and bilateral foot parathesias. Although the examiner found that Claimant was improving, the examiner noted that Claimant was not likely to return to work. Limitations were imposed, no lifting even occasionally of less than 10 pounds, and noted Claimant might benefit from use of cane due to unsteady gait. It also noted that prolonged sitting standing, bending, walking will likely aggravate back pain issues.

A consultative exam was performed on [REDACTED]. At that time the Claimant was fully examined and the examiner found that Claimant had shortness of breath, with chest pain, swelling in feet, ankles and hands. Claimant was found to have joint pain and stiffness, weakness of his muscles, pain and back pain with noted difficulty in walking. There was sensory loss in both feet and had normal, but slow gait. The Claimant could not squat and recover. Assessment was chronic heart failure with fatigue and shortness of breath with chest pain. The examiner found no evidence of congestive heart failure at the time of the exam and blood pressure was controlled. As far as lower back pain is concerned he has a herniated disc in the back with stiffness in the back and numbness and motor weakness in the extensor hallucis longus in both feet so there was neurological deficit noted. Some restriction of movement in both ankles with right more than left due to prior fracture of both ankles. Noted Claimant has difficulty walking more than half a block to one block, because of low back pain and radiation of pain in his legs along with neurological deficits in the legs. The examiner felt he needed a stress test to see the condition of his heart to see if he can do physical work without having chest pain.

The Claimant was evaluated by his nurse practitioner in [REDACTED]. The mental status exam revealed exhibited sadness, normal speech, intact judgment, no psychosis evident, not delusional, though no obsessive or compulsive thought, average intelligence, poor insight, blunted affect, logical and coherent thought process, without suicidal ideation. The Assessment was Mood Disorder, Generalized Anxiety and alcohol abuse. The GAF score was 50.

In [REDACTED] the Claimant was found to have sensory loss and motor weakness in both feet and ankles, with slow gait, with limited range of motion in his lumbar spine and ankles. Claimant weight 288 pounds and is obese. The Claimant was hospitalized with complaints of severe depression with suicidal ideation. Diagnosis was major depressive disorder with alcohol abuse.

In [REDACTED] the Claimant was hospitalized due to severe depression with alcohol poisoning and suicidal ideation due to taking too much medication attempting to harm himself. The Claimant was transferred to a mental health inpatient facility for further treatment and evaluation based upon the hospital evaluation that Claimant was mentally ill with substantial disorder of thought or moods that significantly impairs judgment, behavior, and capacity to recognize reality or ability to cope with ordinary demands of life with diagnosis of major depression.

The Claimant has treated for his depression since [REDACTED]. The Claimant was seen for problems of low energy, motivation and coping with depression by drinking. At the time he was assessed he was diagnosed with Major depressive disorder, single episode with alcohol dependency.

Here, Claimant has satisfied requirements as set forth in Step 1 and Step 2 of the sequential evaluation as he is not employed and his impairments have met the Step 2 severity requirements.

In addition, at Step 3, the Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Listings 4.02 Chronic Heart Failure was considered but the Claimant's objective testing did not demonstrate that it met the ejection fraction of 30%, and/or the enlarged left ventricular wall thickening requirements all contained in Section A, subparagraphs 1 and 2 of the listing. However Part B requirements were not met nor demonstrated by the objective medical evidence, specifically persistent symptoms of heart failure such that activities of daily living are severely limited, 3 episodes of acute congestive heart failure within a consecutive 12 month period, and lastly inability to perform an exercise tolerance test at a workload equivalent of 5 mets.

Listing 1.04 Disorders of the Spine was also considered but was not met as there was no evidence of nerve root compression. Listing 12.04 Affective Disorders and Listing 12.06 Anxiety were also considered and were not met based upon the objective medical evidence and treatment records available. Therefore, vocational factors will be considered to determine Claimant's residual functional capacity to do relevant work.

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 working as a general laborer installing vinyl siding, concrete installation and breaking concrete as well in preparation of installation. Claimant last worked in 2007 in shipping and receiving at a sausage manufacturer loading food on pallets. The Claimant testified that siding installation required that he climb ladders and carry loads of siding weighting 100 pounds often unloading the siding manually. The concrete work required he use and swing a 20 pound sledge hammer. His last employment loading food on pallets required lifting food weighing on average 60 pounds. The Claimant's prior work would

be categorized as unskilled heavy work. This Administrative Law Judge finds, based on the medical evidence and objective, physical limitations testified by the Claimant and confirmed by his treating physician's assessment that Claimant is not capable of the physical activities required to perform any such position 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 50 years of age, considered to be a person of advanced age for MA-P purposes. The Claimant has a high school 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). In this case the Claimant's skills are not transferable as the majority was unskilled.

In the present case, the Claimant alleges physical disabling impairments due to high blood pressure, chronic heart failure with triple bypass surgery, obesity, ankle and foot swelling and numbness and tingling and back pain with herniated disc in lumbar spine. The Claimant has alleged mental disabling impairments due to depression and anxiety. The Claimant's treating physician recently completed a DHS 49 which indicated that the Claimant could not lift less than 10 pounds one year post heart bypass surgery. The doctor further found that it would be unlikely that Claimant would return to work due to the fact that any standing, sitting, walking would cause aggravation of Claimant's back pain. Both doctors that examined the Claimant in [REDACTED] [REDACTED] found positive straight leg raising bilaterally. The Consultative doctor found, as far as lower back pain is concerned, he has a herniated disc in the back with stiffness in the back and numbness and motor weakness in the extensor hallucis longus in both feet so there was neurological deficit noted. Some restriction of movement in both ankles with

right more than left due to prior fracture of both ankles. Noted Claimant has difficulty walking more than half a block to one block, because of low back pain and radiation of pain in his legs along with neurological deficits in the legs. The examiner felt he needed a stress test to see the condition of his heart to see if he can do physical work without having chest pain. Both doctors place the Claimant at less than sedentary. Additionally, as of [REDACTED] after triple bypass surgery and due to severe obesity with a body mass index of 49 the Claimant must be deemed disabled as of that time.

During the hearing the Claimant credibly testified that he can stand about 10 minutes and sit for 30 minutes, cannot do laundry due to his bad back and can carry 5 pounds. He does not grocery shop as it requires too much walking. At the hearing it was noted that the Claimant walks with a limp. The Claimant testified that his right ankle is worse and he has numbness in both feet and back pain which shoots down both legs. The Claimant indicated he could walk 100 yards and then becomes short of breath. The Claimant can shower and dress himself.

After a review of the entire record, including the Claimant's testimony and medical evidence presented, and in consideration of the Claimant's physical impairments including high blood pressure, chronic heart failure, triple bypass surgery, severe obesity, with chronic back pain with herniated disc, with leg and foot swelling and radiating pain, the objective medical evidence provided by the Claimant's treating doctor's evaluation and earlier consultative examination places the Claimant at the less than sedentary activity level. It is noted that the Claimant is found disabled as of [REDACTED] the date he underwent triple bypass surgery at which time he was disabled and unable to work thereafter. Deference was given to the opinion of the treating physician and earlier consultative exam. The total impact caused by the physical impairment suffered by the Claimant, and his status and back pain and obesity 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.

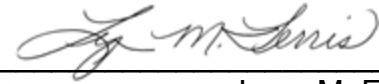
DECISION AND ORDER

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

Accordingly, the Department's decision is hereby REVERSED.

1. The Department is ordered to process the Claimant's application dated April 25, 2012 and any retro application 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 August 2014 in accordance with Department policy.



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

Date Signed: August 6, 2013

Date Mailed: August 6, 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]
[REDACTED]
[REDACTED]
[REDACTED]