

**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 24318
Issue No.: 2009
Case No.: ██████████
Hearing Date: May 6, 2013
County: Macomb (12)

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 May 6, 2013, from Clinton Township, Michigan. Participants on behalf of Claimant included the Claimant. ██████████ the Claimant's Authorized Hearing Representative, who also appeared on behalf of the Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████ ES, and ██████████ ██████████ Lead 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 July 18, 2012 Claimant applied for MA-P.
2. On October 4, 2012 the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant the Notice of Case Action dated January 2, 2013 denying the Claimant's MA-P application. Exhibit 1

4. On, January 2, 2013 Claimant's AHR submitted to the Department a timely hearing request.
5. On March 21, 2013 the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on May 8, 2013 ordering the Department to schedule a consultative examination and to receive additional medical evidence submitted at the hearing by the Claimant's AHR.
7. December 2, 2013 the State Hearing Review Team denied claimant's request and found claimant not disabled.
8. Claimant at the time of the hearing was [REDACTED] years old with a birth date of [REDACTED]. The claimant is now [REDACTED] years of age. Claimant's height was 6'0" and weighed 500 pounds. The claimant has gained 50 pounds within the last six months.
9. Claimant completed high school.
10. Claimant's prior work experience is as a parts manager, a steel processing plant filling orders, and pharmaceutical distribution company filling orders. The Claimant also climbed ladders and operated a high lo when filling orders.
11. The claimant has not alleged any mental disabling impairments.
12. Claimant alleges physical disabling impairments due to left ankle surgery and surgery redo, and infection of left ankle. The Claimant is also obese. BMI of 68. The Claimant has hypothyroidism, COPD with use of a CPAP machine and hypertension.
13. Claimant's impairments have lasted or are expected to last for 12 months' duration or more.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is

considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

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).

Claimant alleges physical disabling impairments due to left ankle surgery and surgery redo, and infection of left ankle. The Claimant is also obese. BMI of 68. The Claimant has hypothyroidism, COPD with use of a CPAP machine and hypertension.

The claimant has not alleged any mental disabling impairment.

A summary of the claimant's medical evidence presented at the hearing and the new evidence presented follows.

The Claimant was admitted for a two day stay on [REDACTED].

On [REDACTED] the Claimant was admitted due to a severe ankle fracture and discharged.

On July 18, 2012 the Claimant was re-admitted for a revision of the open reduction of his ankle because the internal fixation failed.

The Claimant was admitted on [REDACTED] due to a non-healing post two ankle surgeries and placed on antibiotic therapy.

Thereafter the Claimant was seen on [REDACTED]. The Claimant was seen for follow up and was still non-weight bearing on his left ankle. The skin ulcer was improved. The claimant was placed on partial weight bearing with fracture boot only with walker up to 50% for 4 weeks. On [REDACTED] the Claimant was again seen for follow up and was still on 50% weight bearing with a boot and when able to walk without a walker he may return to work.

A consultative examination with completion of a DHS 49 was completed on [REDACTED]. The current diagnosis was chronic pain and leg swelling of left ankle. Knee instability, COPD with CPAP machine, severe obesity, shortness of breath with moderate exertion, rectal bleed, and diverticulitis with partial colostomy. The examiner noted the Claimant was extremely obese and has difficult gait due to ankle pain. The Claimant has daytime somnolence despite use of CPAP machine. The Claimant exhibited shortness of breath on mild to moderate exertion, and leg swelling with left leg 2 inches larger than right at mid-calf. The Claimant had a waddling gait with a limp. The clinical impression noted was that the Claimant was deteriorating and that the limitations which were imposed were to last longer than 90 days. The examining doctor imposed limitations on standing and walking such that the Claimant could walk at least 2 hours in an 8 hour workday. The Claimant could sit less than 6 hours in an 8 hour work day. The Claimant used a cane and this assistive device was found warranted

due to difficulty walking with weight bearing on left ankle. The Claimant also was restricted from using foot pedals with his left leg or foot. The basis for the physical limitations was based on pain and swelling in left ankle, and left leg with instability of left knee joint with tendency to fall.

Here, Claimant has satisfied requirements as set forth in steps one and two, as Claimant is not employed and his impairments have met the Step 2 severity requirements.

In addition, the Claimant's impairments have been examined in light of the listings and after a review of the evidence the Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Listing 1.02 Major Dysfunction of a Joint(s) due to any cause) Disorders of the Spine, was examined in light of the Claimant's ankle however the listing requirements were not met or supported by the available medical evidence as the Claimant was still able to ambulate. Therefore, vocational factors will be considered to determine claimant's residual functional capacity to do relevant work.

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. The Claimant cannot do his laundry because he is unable to carry the laundry up and down stairs. Claimant could not walk more than a half block due to ankle pain and shortness of breath. He could stand for 3 to 4 minutes due to pain and needed to use a cane when standing. The Claimant could sit for 1 hour but then experienced restless leg syndrome. The Claimant also had swelling of the left ankle when sitting and noted that his right ankle, previously broken, was fused and caused pain in his shin. The claimant testified he could not bend at the waist with use of his cane. The heaviest weight the Claimant could carry was 10 pounds. The Claimant could not squat or touch his toes and uses a motorized cart when grocery shopping. The claimant's testimony was deemed credible. The consultative examiner found there were limitations and imposed limitations on sitting and standing as well as walking and found an assistive device was necessary.

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 working stocking steel parts, and a job stocking pharmaceutical supplies. The Claimant was on his feet in the jobs he worked at 50% to 70% of the time and also drove a hi lo. One of the jobs required lifting of 10 pounds frequently and 100 pounds on occasion and climbing stairs. The Claimant's work was unskilled and therefore transferability is not an issue. This prior work requires abilities and capabilities that based on the limitations presented can no longer be achieved by the claimant. Therefore it is determined that the claimant is no longer capable of past relevant work. 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 was one month away from turning ■ years of age and thus is considered a person approaching advanced age for MA-P purposes. The Claimant has a high school education and has been restricted with limitations on standing and walking less than 2 hours in an 8 hour workday and sitting less than 6 hours in an 8 hour workday. 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).

After a review of the entire record, including the Claimant's credible testimony and medical evidence presented, and the objective medical evidence, particularly the consultative examiner's impression and imposition of limitations, it is determined that the total impact caused by the physical impairment suffered by the Claimant must be considered and that the Claimant's is capable of sedentary work as he cannot meet the required standing or sitting or lifting requirements for light work. In doing so, it is found that the combination of the Claimant's physical impairments in totality and his severe obesity and BMI of 65 have a major impact on his ability to perform even basic work activities.

In light of the foregoing, it is found that the Claimant maintains the residual functional capacity for work activities on a regular and continuing basis to meet the physical and mental demands required to perform sedentary work as defined in 20 CFR 416.967(a). Based upon the foregoing review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.09, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

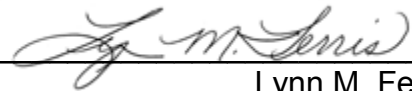
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of September 2010.

Accordingly, the Department's decision is hereby REVERSED.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department is ORDERED to initiate a review of the application dated July 18, 2012 and retro application if any, if not done previously, to determine Claimant's non-medical eligibility.
2. A review of this case shall be set for January 2015.



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

Date Signed: January 16, 2014

Date Mailed: January 16, 2014

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.

2013-24318/LMF

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]
[REDACTED]
[REDACTED]