

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2013-32683
2010-48580

[REDACTED]
Hearing Date: [REDACTED]
Calhoun County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

RECONSIDERATION DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge upon pursuant to MCL 400. 9; MCL 400.37 upon an Order of Reconsideration issued by the 37th Circuit Court [REDACTED] on [REDACTED]. The claimant was present and represented [REDACTED], from [REDACTED] as his authorized representative.

ISSUE

The issue set forth in the original Hearing Decision mailed on [REDACTED] is hereby incorporated by reference.

FINDINGS OF FACT

The Findings of Fact, 1-9, as set forth in the original Hearing Decision mailed on January 17, 2012, are hereby incorporated by reference, with the following added Findings of Fact:

10. On [REDACTED], ALJ Fahie issued a Decision and Order in which the ALJ upheld the Department of Human Services (DHS) denial of the Claimant's [REDACTED] application for Medial Assistance (MA-P) and Retroactive MA-P to [REDACTED].
11. On [REDACTED] the State of Michigan Administrative Hearing System (MAHS) received the claimant's authorized representative request for a rehearing.
12. On [REDACTED], MAHS issued an Order of Dismissal where the request for rehearing was denied.
13. On [REDACTED] Circuit Court remanded the case back to MAHS with an order for the ALJ to reconsider the claimant to be in the age category of an individual who is closely

approaching retirement age (Age 60 or older) and to develop the record an testimony if necessary.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The analysis from the previous decision is incorporated into this decision:

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). At Step 1, the claimant is not engaged in substantial gainful activity and has not worked since February 2010. Therefore, the claimant is not disqualified from receiving disability at Step 1.

Secondly, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Basic work activities means, the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimus* hurdle" in the disability determination.

The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

The objective medical evidence on the record further substantiates the Administrative Law Judge findings. The claimant broke his right ankle on [REDACTED]. He was released on crutches with medications for pain. Department Exhibit 4. The claimant had two separate hospitalizations for significant lesion on this thoracic spine. A surgical decompression was performed. He had subsequently complications with his wound that became infected. He was treated and released. Department Exhibits 6-7 and 15-16. The claimant's treating physician documented that the claimant was essentially healthy. He had high blood pressure in [REDACTED] and [REDACTED] 0. Department Exhibits B5-B6 and B10-B11. In October 7, 2010, the claimant had a diagnosis of hypertension and paraplegia. His physical exam was essentially normal. He did have a slow gait and decreased sensation from the waist down with decreased strength of 4/5. He was stable and could take care of his needs in the home. Department Exhibit B1-B2.

At Step 2, the objective medical evidence in the record indicates that the claimant has established that he has a severe impairment. The claimant broke his ankle. He also had back surgery because of lesions. He had additionally complications because of infections. However, by [REDACTED], his treating physician was only citing his high blood pressure and his physical exam was essentially normal. Therefore, the claimant is not disqualified from receiving disability at Step 2. However, this Administrative Law Judge will proceed through the sequential evaluation process to determine disability because Step 2 is a *de minimus* standard.

In the third step of the sequential consideration 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. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). This Administrative Law Judge finds that the claimant's impairments do not rise to the level necessary to be listed as disabling by law. Therefore, the claimant is disqualified from receiving disability at Step 3.

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings that the claimant is able to maintain his daily living activities. The claimant does feel that his condition has worsened because his legs go to sleep after 15/20 minutes and he has a hard time sleeping because of the pain. The claimant does have a mental impairment of dyslipidemia. The claimant has not smoked since he was a teenager where he smoked a couple of

cigarettes a day. The claimant does not drink alcohol since [REDACTED] where before he drank socially. He has not smoked marijuana since the 1 [REDACTED]. The claimant did not feel there was any work he could do.

From the prior decision signed [REDACTED], the claimant was a [REDACTED] year-old man whose date of birth is [REDACTED]. The claimant was [REDACTED]" tall and weighs [REDACTED] pounds. The claimant has a high school education. The claimant can read and write, and do basic math. The claimant was last employed as a grounds keeper in [REDACTED] at the heavy level. The claimant has also been employed as a railroad clerk at the heavy level, which is his pertinent work history.

At the reconsideration hearing, the claimant provided a more detailed work history. The claimant was a railroad clerk with a title of shipping and receiving clerk where he performed the following duties of data entry where no license was required using basic computer skills like a UPS bar code machine. He drove a forklift where he had a licensed and had to get a physical every year to maintain his license. He helped unload trucks. The claimant also drove the hospitality truck as a part of job duties. The claimant did not work from [REDACTED] where from [REDACTED] he was 75% of rail road salary, [REDACTED], he collected unemployment compensation benefits (UCB), from [REDACTED] and he lived off of his savings.

The claimant went back to work in [REDACTED] where he worked as a grounds keeper. His job duties were shoveling snow, using chemicals for the lawn, and lifted 50 pounds of salt in the winter. His job was mostly standing. He retired from his job in [REDACTED], but was receiving worker's compensation before that. The claimant actually last worked in [REDACTED]. The claimant has not tried to work since and does not think that he would be able to.

At Step 4, this Administrative Law Judge finds that the claimant has established that he cannot perform any of his prior work. His past employment was at the heavy level which he would have a difficult time performing with his physical limitations. However, the claimant should be able to perform at least light work. Therefore, the claimant is not disqualified from receiving disability at Step 4. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether or not the claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents 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 you 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 his/her limitations. 20 CFR 416.966.

...To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very 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).

...To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. 20 CFR 416.967(b).

The objective medical evidence on the record is sufficient that the claimant lacks the residual functional capacity to perform some other less strenuous tasks than in his previous employment or that he is physically unable to do any tasks demanded of him. The claimant's testimony as to his limitation indicates his limitations are exertional and non-exertional.

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, App. 1, 12.00(C).

In the instant case, the claimant testified that he had dyslipidemia. He was not taking medications nor in therapy. See MA analysis step 2. The claimant's treating physician did not list any mental impairment on [REDACTED]. The medical evidence on the record is insufficient to support a mental impairment that is so severe to prevent the claimant from performing any work.

In the previous decision, this Administrative Law Judge found at Step 5, the claimant can meet the physical requirements of light work, based upon the claimant's physical abilities. Under the Medical-Vocational guidelines, an advanced age individual with a high school education, and an unskilled work history, who is limited to light work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.07. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the claimant's physical and mental impairments, the Administrative Law Judge finds that the claimant can perform light work and that the claimant does not meet the definition of disabled under the MA program.

This Administrative Law Judge erred and forgot to put in the statement to reflect the following finding that the claimant's past work was skilled and semiskilled. In addition, the claimant was not considered for sedentary work, when he was found capable of performing light work. In addition, the claimant was not found capable of performing his past work at the heavy level at Step 4. By finding that the claimant could perform light work, this Administrative Law Judge found that the claimant could not perform medium work:

At Step 5, the claimant can meet the physical requirements of light work, based upon the claimant's physical abilities. Under the Medical-Vocational guidelines, an advanced age individual with a high school education, and an **unskilled and semiskilled**, work history, who is limited to light work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.07. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the claimant's physical and mental impairments, the Administrative Law Judge finds that the claimant can perform **unskilled to semi-skilled**, light work and that the claimant does not meet the definition of disabled under the MA program.

The claimant's treating physician in [REDACTED] from Step 2, gave the claimant an essentially normal physical examination. The claimant had a diagnosis of hypertension and paraplegia. He did have a slow gait and decreased sensation from the waist down with decreased strength of 4/5 out of 5/5. He was stable and could take care of his needs in the home. Department Exhibit B1-B2. The claimant had no documented mental impairment as documented in Step 4 that would prevent him from performing work where he was not in therapy or taking medications for his mental impairment. As a result, this Administrative Law Judge with the other medical evidence and the claimant's testimony correctly determined that the claimant could perform semi-skilled, light work. Therefore, this Administrative Law Judge would still find that the claimant does not meet the MA disability standard, using Medical Vocational Rule 202.07 as a guide.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the original Decision and Order with the aforementioned correction mailed on [REDACTED], is hereby **AFFIRMED**.

/S/

Carmen G. Fahie
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: 06/10/2013

Date Mailed: 06/11/2013

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.

CGF/hj

cc:

