

**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 36006
Issue No.: 2009
Case No.: ██████████
Hearing Date: August 7, 2013
Wayne County DHS (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 upon the claimant's request for a hearing. After due notice, a three way telephone hearing was conducted from Taylor, Michigan on August 7, 2013. The Claimant appeared and testified by telephone from ██████████ ██████████ ██████████ the Claimant's Authorized Hearing Representative, also appeared. ██████████, Medical Contact Worker, appeared on behalf of the 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 and retro MA -P (August 2012) on October 25, 2012.
2. On January 11, 2013, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1)
3. On January 17, 2013, the Department notified the Claimant and Claimant's AHR of the MRT decision.
4. On March 12, 2013, the Department received the Claimant's timely written request for hearing.

5. On June 7, 2013, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued on August 7, 2013 to accept new evidence submitted by the Claimant's Authorized Hearing Representative.
7. The new evidence was submitted to SHRT on August 9, 2013.
8. On October 2, 2013 the SHRT found the Claimant not disabled.
9. The Claimant has alleged physical disabling impairments due to a heart attack, (acute myocardial infarction) which occurred in [REDACTED]. The claimant had surgery and stenting was performed. The claimant also alleged disability due to arthritis in his spine and sciatic nerve surgery and back surgery performed approximately 8 years ago on L3, L4 and L5. No medical records with regard to the claimant's sciatic nerve surgery or L3, L4 and L5 surgery were submitted. No medical evidence or records regarding arthritis of the spine was presented.
10. The Claimant has not alleged any mental disabling impairment and has not received any treatment or any medications for mental impairment.
11. At the time of hearing, the Claimant was [REDACTED] years old with an [REDACTED] birth date; was 5' 10.5" in height; and weighed 220 pounds.
12. The Claimant completed high school and has a high school diploma. The Claimant has an employment history working as a manager and owner of a sports bar.

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 of Human Services ("DHS"), 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 Tables ("RFT").

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 416.913 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 (i.e. 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 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 an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 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 416.945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 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 employed or working at this time and is not considered substantial gainful activity. Accordingly, the Claimant is found 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 416.920(a)(4)(ii); 20 CFR 416.920(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 416.920(a)(4)(ii); 20 CFR 416.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(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 has alleged physical disabling impairments due to a heart attack, (acute myocardial infarction) which occurred in [REDACTED] The claimant had surgery and

stenting was performed. The claimant also alleged disability due to arthritis in his spine and sciatic nerve surgery and back surgery performed approximately 8 years ago on L3, L4 and L5. No medical records with regard to the claimant's sciatic nerve surgery or L3, L4 and L5 surgery were submitted. No medical evidence or records regarding arthritis of the spine was presented.

The Claimant alleges no mental disabling impairments.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). The medical records that were submitted were fully reviewed. The Claimant has presented medical evidence of one hospitalization in connection with a heart attack and stenting.

The medical records also were devoid of any medical reports documenting prior back and sciatic nerve surgeries and arthritis in the spine.

Ultimately, the medical evidence does not establish that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. The evidence presented in this case documented a hospitalization and stenting in [REDACTED] with follow up rehabilitation. Since that time no additional new medical evidence was provided or submitted. As previously stated the claimant also provided no objective medical evidence regarding his prior back surgery and sciatic nerve surgery. On the date of the hearing it was approximately one year post heart attack and at the hearing the claimant indicated that he was on medications for his heart condition and although he testified to significant physical limitations, able to stand 10 or 15 minutes, sit 20 minutes and walk approximately one block, the claimant could shower and dress himself and tie his shoes. Although he did testify to having a level of pain of 6 with pain medication, nothing in the medical record suggests that the limitations he testified to are supported by objective medical evidence.

Accordingly, the Claimant's impairment(s) is considered non-severe and furthermore there is no medical evidence that would support that the claimant's medical conditions have lasted or are expected to last 12 months in duration; thus, the Claimant is found not disabled at Step 2 with no further analysis required.

Assuming *arguendo* that further analysis was necessary in light of the above determination, a Step 3 analysis of the Social Security Listings was made. The following Listings were reviewed in light of the medical evidence presented. Listings 4.02, Chronic Heart Failure and 4.04 ischemic heart disease were consulted and upon review it was found that the claimant did not meet the criteria set forth in those listings nor did the medical records substantiate the listing was met, and thus the listings were not met. In addition Listing 1.04 Disorders of the Spine was also reviewed but in light of

the fact that there was no objective medical evidence presented the listing was not demonstrated to be met.

Assuming *arguendo* that further analysis was necessary, in light of the finding that Claimant was not disabled at Step 2 as the objective medical evidence presented did not establish a severe impairment(s) a Step 4 analysis is made below.

The fourth step in analyzing a disability claim requires an assessment of the claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 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 (e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) 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 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 prior work history consists of working as a sports bar manager and owner. As regards his job responsibilities, the claimant testified that he was responsible to run the business, ordered the food and alcohol, prepared the payroll and was on his feet much of the time, but was not required to lift anything heavy. The job would be classified as light work as the Claimant did not indicate that lifting of heavy objects was required during his testimony. In light of the Claimant's testimony and records, and in consideration of the Occupational Code, the Claimant's prior work is classified as light work.

While the claimant testified to serious physical limitations as previously outlined in this Decision, such as inability to stand more than 10 to 15 minutes, able to sit only 20 minutes and walk 5 to 10 minutes, approximately one block, and inability to bend at the waist, this testimony is not supported with objective medical evaluation, observation and

testing and records to support these restrictions that he cannot perform his past relevant work as a bar manager. The evidence available would in fact indicate otherwise. In fact the rehabilitation records after Claimant's heart attack indicate the Claimant was capable of 43 minutes of exercise and that he tolerated the regimen well, with no mention of back pain interfering. This determination was also based on the fact that claimant testified at the hearing that the job of managing and owning a sports bar did not involve significant lifting of objects. Although the Claimant testified to the above limitations and restrictions, in light of the lack of any objective medical evidence presented in this matter to support these limitations, it is determined that the Claimant would be capable of performing past relevant work based upon the evidence presented and thus would be also found not disabled at Step 4.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant not disabled for purposes of the MA-P benefit program.

Accordingly, it is ORDERED:

The Department's determination is AFFIRMED.



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

Date Signed: October 29, 2013

Date Mailed: October 29, 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.

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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]