

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2013 4753
Issue No.: 2009
Case No.: ██████████
Hearing Date: January 28, 2013
County: Wayne (49)

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 January 28, 2013 from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. ██████████, the Claimant's Authorized Hearing Representative, also appeared on behalf of the Claimant. 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 February 7, 2012 Claimant applied for MA-P and retro MA-P (November 2011).
2. On August 1, 2012, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant's AHR the Notice of Case Action dated August 1, 2012 denying the Claimant's MA-P application. Exhibit 1

4. On October 9, 2012 the Claimant's AHR submitted to the Department a timely hearing request.
5. On November 26, 2012 the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was entered on January 31, 2013 requesting the Claimant's AHR to obtain a DHS 49 from the Claimant's treating doctor and requesting the Department to obtain additional medical information regarding hospitalization records and a consultative psychiatric exam.
7. The new evidence was provided to the State Hearing Review Team (SHRT) on June 19, 2013 and the SHRT denied disability on August 8, 2013.
8. Claimant at the time of the hearing was [REDACTED] years old with a birth date of [REDACTED]. The Claimant is now [REDACTED]. Claimant's height was 5'7" and weighed 130 pounds.
9. Claimant completed the equivalent of a 10th grade education.
10. Claimant has employment experience (last worked 2007) as a cook for the [REDACTED] [REDACTED] serving breakfast and lunch to middle school students. The Claimant also worked for a commercial laundry sorting and loading and unloading trucks. The Claimant also worked as a security guard.
11. Claimant alleges physical disabling impairments due to severe leg pain started after a hematoma and prolonged hospitalization due to necrotizing pancreatitis, and brittle diabetes and portal vein thrombosis and splenic vein thrombosis
12. Claimant has alleged mental disabling impairments due to major depression.
13. Claimant's impairments have lasted or are expected to last for 12 months' duration or more.

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 severe leg pain started after a hematoma and prolonged hospitalization due to necrotizing pancreatitis, and brittle diabetes and portal vein thrombosis and splenic vein thrombosis

Claimant has alleged mental disabling impairments due to major depression.

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

A Status Note from the [REDACTED] dated [REDACTED] was presented. The appointment was for reevaluation of left leg pain. Leg pain started after a hematoma and prolonged hospitalization due to necrotizing pancreatitis that led to brittle diabetes and well as portal vein thrombosis and splenic vein thrombosis. The pain was described as pins and needles from left hip to left ankle. The pain was exacerbated with standing and any touch to the legs. The examiner also noted the Claimant expressed suicidal ideation and cannot afford his medications for depression. Pain medication does not relieve pain but brings it down to 7 of 10. The Claimant reported use of a cane and a left leg brace as his left knee goes out. The Claimant's blood sugar due to diabetes was uncontrolled. At the time the Claimant was waiting for a referral to the [REDACTED] for a psychiatric referral. At the examination the Claimant was referred to the ER due to his suicidal plan of hanging himself and for a triage. The examiner wanted to obtain an EMG of left leg to see if the left leg has a dermatomal pattern or pain is from the lumbar lexus versus CRPS.

The Claimant was seen at the [REDACTED] on [REDACTED] for recheck due to pain, weakness and atrophy of his left lower extremity. The assessment was diabetes mellitus, acute vascular insufficiency of intestine, chronic pancreatitis, pain in soft tissues of left limb, and abnormal coagulation profile.

A consultative psychiatric evaluation was performed on [REDACTED]. The evaluator gave a diagnosis of Major Depressive Disorder with psychotic features, rule out mood disorder secondary to general medical condition. Alcohol and marijuana abuse in remission. GAF score was 50. The examiner concluded that due to Claimant's depression with physical limitations and psychotic symptoms he is restricted to work that involves brief and superficial interactions with coworkers, supervisors and the public. Prognosis was fair to guarded. The Mental Residual Functional Capacity Examination noted that the Claimant was not significantly limited in understanding and memory, or sustained concentration except he was evaluated as moderately limited in his ability to perform activities within a schedule, be punctual, sustain a routine without supervision, to make simple work-related decisions, and complete a normal work day without interruptions. The Claimant was moderately limited in all categories regarding social interaction and adaption. These moderate limitations indicate an impaired capacity to perform the activity.

The Claimant's treating physician completed a medical examination report on [REDACTED] [REDACTED] which noted Claimant's mood was depressed, Claimant walked with a cane and left knee was immobilized. The exam noted left atrophy of left thigh, mood assessment noted anhedonia. Claimant's condition was deteriorating and limitations were imposed. The Claimant also could not meet his needs in the home including housework, laundry and errands. The claimant was limited to lifting 10 pounds only occasionally and could

stand or walk less than 2 hours in an 8-hour work day and sit less than 6 hours in an 8-hour work day. The Claimant's cane was deemed necessary and Claimant could not push or pull with either hand or arm. The Claimant had been seeing this doctor since [REDACTED]. The diagnosis was necrotizing pancreatitis, acute vascular insufficiency of intestine, hypertension, diabetes and major depressive disorder. The Claimant had been seen by the doctor since [REDACTED] and was seen one or two times per month.

The Claimant was hospitalized for his depression in [REDACTED]. He reported severe depression, hopelessness and feeling worthless, and suicidal. His evaluator and treater for the admission noted a GAF of 20 with major depressive disorder. Prognosis was fair. The Claimant was hospitalized for 3 days. He was unresponsive when found and had been drinking. He was discharged improved and was referred to [REDACTED] for treatment.

The Claimant was admitted to the hospital for an extended stay with necrotizing pancreatitis, portal vein thrombosis and diabetic ketoacidosis. Claimant was admitted for ketoacidosis for 2 days, [REDACTED], and on second admission for 30 days with extended stay in the ICU. The Claimant was also hospitalized in June for the same symptoms.

Here, Claimant has satisfied requirements as set forth in steps one, two, as Claimant is not employed and has demonstrated impairments which 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 12.04 Affective Disorders, (Depression) was reviewed and it was determined that the listing was not met. Listing 1.02 Major Dysfunction of a Joint(s) (due to any cause) was also reviewed and it was determined that the Claimant retains the ability to ambulate and thus the listing was not met. Listing 5.00 Digestive System was also reviewed for pancreatitis and based upon the medical evidence submitted the severity of digestive disruptions required by the listing is determined to not be met. 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's treating physician noted that Claimant would be able to stand and walk for less than 2 hours in an 8-hour day, was limited to lifting 10 pounds occasionally and was noted as unable to reach or push and pull with both hands and unable to operate foot controls with the left foot. The Claimant was evaluated as stable but also was found to require assistance with cooking, laundry and grocery shopping, and the use of the assistive device was deemed necessary.

Claimant credibly testified to the following symptoms and abilities: the Claimant could not walk more than a half block slowly and could stand for 10-15 minutes and sit for 20 minutes. The Claimant could lift no more than 10 pounds and needs assistance with

showering. The Claimant testified he could not squat due to lack of strength. The Claimant cannot climb stairs without difficulty. The Claimant's testimony is supported by his treating physician's evaluation and imposition of limitations.

In the fourth step of the analysis the issue 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 cook for the [REDACTED] serving breakfast and lunch to middle school students. The Claimant also worked for a commercial laundry sorting and loading and unloading trucks. The Claimant also worked as a security guard. The Claimant testified that all of these positions required standing and walking much of the work day and that his job as a cook required him to lift at least 20 pounds. His job in the commercial laundry required lifting of 50 pounds regularly. The security guard position required standing and walking in an industrial site much of the work day. The Claimant's prior positions involved light to medium work and were unskilled, (laundry) and semi-skilled (cook) and the skills are not transferable.

Given the Claimant's documented limitations with standing, walking and sitting and the limitation for pushing and pulling with the use of his hands, the Claimant cannot perform any of the functions previously performed in his cooking and laundry positions and cannot meet the standing and walking requirements of those jobs as well as the lifting requirements. This Administrative Law Judge finds, based on the medical evidence and objective, physical limitations testified by the Claimant and confirmed by his treating doctor's assessment and imposition of limitations, 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 ■ years old and is presently ■ and, thus, considered to be a younger individual for MA-P purposes. The Claimant has a 10th grade education, and does not have developed math skills and has been restricted with the use of hands and left foot due to neuropathy. 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).

The evaluations and medical opinions of a "treating" physician is "controlling" if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and are not inconsistent with the other substantial evidence in the case record. 20 CFR§ 404.1527(d)(2), Deference was given by the undersigned to objective medical testing and clinical observations of the Claimant's treating physician. In addition, the Claimant's evaluation by his treating psychiatrist also painted a picture of someone with severe depression. It is also determined that drugs and alcohol are not material as Claimant has been in remission.

After a review of the entire record, including the Claimant's testimony and medical evidence presented, and the objective medical evidence provided by the Claimant's treating physician who places the Claimant at less than sedentary, the total impact caused by the physical impairment suffered by the Claimant and mental impairments in combination must be considered. In doing so, it is found that the combination of the Claimant's physical impairments including diabetes mellitus, severe leg pain started after a hematoma and prolonged hospitalization due to necrotizing pancreatitis, and brittle diabetes and portal vein thrombosis and splenic vein thrombosis and severe major depression have 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.

DECISION AND ORDER

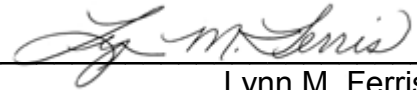
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of September 2010.

Accordingly, the Department's determination is 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 February 7, 2012 and applicable retro period (November 2011) 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 10, 2014

Date Mailed: January 10, 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.

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

2013-4753/LMF

LMF/cl

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]