

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2013 48027
Issue No.: 2009
Case No.: ██████████
Hearing Date: August 26, 2013
County: Wayne (82)

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 August 26, 2013, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. ██████████, a witness, also appeared on behalf of 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 ██████████, Eligibility Specialist, and ██████████.

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 October 25, 2012 Claimant applied for MA-P and retro MA-P (August 2012).
2. On December 6, 2012 the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant the Notice of Case Action dated December 10, 2012 denying the Claimant's MA-P application. Exhibit 1

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 chronic pain in right knee, with osteoarthritis, and chronic right hip pain after surgery to remove large tumor in his right thigh, and hypertension. The Claimant is also obese. BMI of 38.

The Claimant has alleged a mental disabling impairment due to depression.

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

On [REDACTED] consultative psychiatric evaluation was conducted. The examiner's diagnosis was major depressive disorder, cannabis and nicotine dependence. GAF score was 50, prognosis was guarded with statement "He needs continued treatment and support services." A Mental Residual Functional Capacity Assessment was performed as part of the examination and found the Claimant was not significantly limited in all categories of Social Interaction and Adaption; however, Claimant was deemed moderately limited in ability to respond appropriately to change in work setting.

As regards Sustained Concentration the Claimant was markedly limited in ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances, ability to sustain an ordinary routine without supervision, ability to work in coordination with or proximity to others without being distracted by them, and ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. The Claimant was moderately limited in ability to carry out detailed instructions, ability to maintain attention and concentration for extended periods and ability to make simple work-related decisions. The Claimant was not significantly limited in ability to carry out simple, one or two step instructions.

As regards Understanding and Memory, the Claimant was found moderately limited in ability to remember locations and work-like procedures and ability to understand and remember detailed instructions. The Claimant was not significantly limited in ability to understand and remember one or two step instructions.

A consultative internal medicine examination was conducted on [REDACTED]. The examiner found Claimant to have significant bilateral edema, worse on the right. The patient was unable to stand more than 15 minutes at a time. The Claimant also had difficulty squatting, with tightness around the right hip and limitation to range of motion of the hip. The right knee had limited range of motion due to arthritis (0°-120°) with antalgic gait. The impression was fine and gross dexterity is intact. Osteoarthritis and spinal disorder. The patient has pain and reports that pain is continuous in the right

hip and knee with reduced range of motion of both joints. The examiner noted significant scarring in the right hip and groin region and that by itself limits the movement of the right hip and reduced range of motion of the right hip. The patient clearly has significant venous insufficiency with permanent edema in the lower extremities. Ambulation – the patient ambulated with an antalgic gait, squatting was very limited, difficulty doing tandem walk, needed assistance getting on and off exam table and used a cane.

The following limitations were imposed. The Claimant could stand 30 minutes at a time, could push, carry and pull 20-30 pounds, could not squat and arise and could not tie shoes or stoop. The examiner found assistive device, walking aid was supported to relieve pain.

Another evaluation was done at [REDACTED] on [REDACTED] which imposed limitations of frequently lifting up to 20 pounds and use of left foot/ leg only to operate foot controls, and no limitations with hands or arms.

The Claimant was seen in the emergency room on [REDACTED] with complaints of chronic cough and having thoughts of hurting himself and requested to speak to a psychiatrist. The Claimant was not admitted but was diagnosed with uncontrolled hypertension, intermittent right knee effusion, probably secondary to arthritis, and acute depression and suicidal ideation. A chest x-ray noted borderline cardiomegaly with mild pulmonary vascular congestion. After psychiatric evaluation the Claimant was discharged home with psychiatry follow-up. Claimant did not meet criteria for hospitalization. An x-ray of right knee noted internal fixation of distal femur with extensive hypertrophic ossification and chondrocalcinosis suggestive of CPPD, calcium pyrophosphate deposition disease, and small knee joint effusion.

In [REDACTED] the Claimant had surgery for the removal of an AV malformation on lateral part of his right thigh. The Claimant was hospitalized for two weeks. The malformation was 7 cm in diameter and extends 5 cm up from skin and was described as large. After healing of the wound a skin graft was performed. In follow up on [REDACTED] after skin grafting, the examining doctor evaluated the Claimant and the graft inside are all healed and everything was great.

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) was examined in light of the Claimant's antalgic gait and right thigh surgery, but the specific criteria required by the listing were not met based upon the medical evidence. Further, although the Claimant uses a cane he was still able to ambulate. Listing 12.04 Affective Disorders was also reviewed and although the Claimant was

markedly limited in some work-related categories, he had no limitations in social interaction and adaption. Thus the full requirement of the listing was not 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, and 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 block due to hip and knee pain. He could stand for 20 minutes and needed to use a cane when standing and walking. The Claimant could sit for only 20 minutes due to leg pain. The Claimant also had swelling of both lower extremities. The Claimant also has severe varicose veins. The Claimant testified he could bend at the waist with use of his cane. The heaviest weight the Claimant could carry was 5 pounds. The Claimant could not squat or touch his toes. The Claimant's testimony was deemed credible.

The Consultative examiner found there were limitations and imposed limitations on standing 30 minutes and he could not use his right foot to operate foot controls and found an assistive device (cane) 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 a shipping clerk and drove a hi lo as part of his job. The Claimant was on his feet in the jobs he worked at between 50% to 70% of the time and also drove a hi lo. In this job Claimant was required to be on his feet most of the day and often had to carry up to 50 pounds. 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 cannot be any longer 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 years of age and thus is considered a person approaching advanced age for MA-P purposes. The Claimant has an 8th grade education and has been restricted with limitations on standing for 30 minutes at a time in an 8 hour work day and sitting less than 6 hours in an 8 hour work day. 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 the objective medical evidence, it is determined that the Claimant is capable of sedentary work. This determination is based on the consultative physical examination conducted one year after removal of a large tumor in the right thigh which exam noted significant bilateral edema, patient unable to stand more than 30 minutes, found use of cane necessary for pain and that the Claimant could not squat or use his right foot to operate foot controls. Therefore, it is determined that the total impact caused by the physical impairment suffered by the Claimant must be considered and that the Claimant is capable of sedentary work as he cannot meet the required standing requirements for light work. In doing so, it is found that the combination of the Claimant's physical impairments in totality and his obesity and BMI of 38 have a major impact on his ability to perform work activities requiring a finding that he is capable of sedentary work..

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

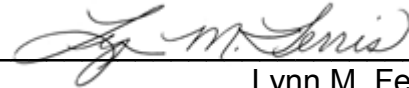
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of September 2010.

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 October 25, 2012 and retro application (August 2012) if not done previously, to determine Claimant's non-medical eligibility.

2. A review of this case shall be set for February 2015.



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

Date Signed: February 26, 2014

Date Mailed: February 26, 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

2013-48027/LMF

LMF/cl

cc:

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