

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

IN THE MATTER OF:



Reg. No.: 201361278
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: December 11, 2013
County: Kalamazoo

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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, a telephone hearing was held on December 11, 2013 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Eligibility Specialist).

ISSUE

Did the Department properly deny Claimant's application for Medical Assistance (MA-P)?

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 March 4, 2013, Claimant filed an application for MA-P benefits alleging disability.
2. On June 7, 2013, the Medical Review Team (MRT) denied Claimant's application for MA-P.
3. On June 10, 2013, the Department caseworker sent Claimant notice that his application was denied.
4. On July 25, 2013, Claimant filed a request for a hearing to contest the Department's action.

5. On September 13, 2013, the State Hearing Review Team (SHRT) denied Claimant's application.
6. A telephone hearing was held on December 11, 2013.
7. Claimant alleged the following physically disabling impairments: asthma, bronchitis and severe osteoporosis due to excessive use of prednisone.
8. Claimant has not alleged any mentally disabling impairment.
9. At the time of the hearing, Claimant was 50 (fifty) years old with a birth date of [REDACTED], stood 6'1" tall and weighed approximately 202 (two-hundred and two) pounds (lbs).
10. Claimant has a high school education (GED) with no significant employment history. Claimant testified that he worked for a period of time on a crew who responded to a Michigan oil spill in 2009.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program 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 of Human Services (DHS or Department) 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).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the MA program. 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

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. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only the claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a

determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

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 your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e). Statements about pain or other symptoms do not alone establish disability. 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. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

The law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful activity can be achieved, a finding of not disabled must be rendered.

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).

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 (e.g. 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 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.

At step one, the Administrative Law Judge must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he or she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he or she is not disabled regardless of how severe his or her physical or mental impairments are and regardless of his or her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the 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 and 416.921; 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 or she is not disabled.

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). First, an individual's pertinent symptoms, signs and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1). When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate

the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2). Functional limitations are assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively and on a sustained basis. 20 CFR 416.920(a)(2). Chronic mental disorders, structured settings, medication and other treatment, and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining and individual's degree of functional limitation. 20 CFR 416.920a(c)(4).

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). 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).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are 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).

At step three, the Administrative Law Judge must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment

or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(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, all of the claimant's impairments, including impairments that are not severe, must be considered (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his or her past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 (fifteen) years or 15 (fifteen) years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the claimant has the residual functional capacity to do his or her past relevant work, 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 and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the claimant is able to do any other work considering his or her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he or she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he or she is disabled.

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. The terms are defined as follows:

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).

The analysis begins at Step 1. To be eligible for disability benefits, a person must be unable to engage in substantial gainful activity (SGA). Claimant is not engaged in substantial gainful activity and has not worked since 2010. Therefore, Claimant is not disqualified from receiving disability at Step 1 and the analysis proceeds to Step 2.

At Step 2, Claimant's symptoms are evaluated to see if there is an underlying medically determinable physical or mental impairment(s) that could reasonably be expected to produce Claimant's pain or other symptoms. This must be shown by medically acceptable clinical and laboratory diagnostic techniques. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of Claimant's symptoms to determine the extent to which they limit Claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

In the present case, Claimant alleges disability due to bronchitis and asthma. However, during the hearing Claimant testified that his prednisone treatments have caused him to develop osteoporosis which prevents him from working.

The medical evidence in this record indicates that Claimant has severe bronchial asthma with recurrent uses of prednisone since 2007. Records also indicated that he had been diagnosed with bronchopulmonary aspergillosis.

Claimant's medical records demonstrated hospital admissions in [REDACTED] with difficulty breathing. According to the records, some of these visits were considered urgent or were assigned full code status. Claimant had an allergy test dated [REDACTED] which showed that he had several allergy triggers including cockroaches, trees, grass, ragweed and cat dander. Claimant had a Pulmonary Function Test (PFT) taken on [REDACTED] which demonstrated a FEV₁ of 49% and a lung age of 132. Claimant's pulmonology progress notes at this time indicate that Claimant's asthma was poorly controlled and that Claimant had an IgE level of 1879.

Emergency room records from [REDACTED] indicated that Claimant had been a smoker and was advised to quit. On [REDACTED], Claimant went to the emergency room with left neck and arm pain after sneezing. His chest x-rays were normal. He was diagnosed with a neck strain.

On [REDACTED], Claimant was lifting weights at the gym and felt a “pop” in his low back. He visited the emergency room with back pain. He was given medications for pain and instructions to follow up with his doctor. Claimant visited the emergency room on [REDACTED] complaining of right knee and right hand pain after falling down some stairs. His x-rays were normal. He was diagnosed with a right hand contusion and right knee pain. Claimant was admitted to [REDACTED] on [REDACTED] for breathing problems. Doctors stressed to Claimant that he needed to stop smoking and that he needed to continue taking his medications.

On [REDACTED], Claimant’s pulmonologist wrote a letter asking for insurance approval for assistance with Xolair and for a visit to [REDACTED] for an asthma second opinion. In this letter, Claimant’s pulmonologist noted that Claimant is one of the worst asthma patients he has ever treated. Claimant’s [REDACTED] pulmonology records showed that he had asthma and was taking prednisone 40 mg per day. In an attempt to control his asthma symptoms, the pulmonologist wanted to continue steroids and try itraconazole.

Claimant’s pulmonary function report dated [REDACTED] demonstrated the following: (before bronchodilators (i.e., Albuterol)) Claimant had a Forced Vital Capacity (FVC) for 5 tests at 3.3, 3.8, 3.6, 3.9 and 4.1. Claimant’s 5 tests of his Forced Expiratory Volume at 1 Second (FEV₁) were 1.8, 2.0, 2.0, 1.8 and 2.2. After 10 minutes of bronchodilator, Claimant’s 5 FVC test values were: 4.1, 4.2, 4.3, 4.2 and 4.5. His FEV₁ 5 tests were 2.8, 2.8, 2.9, 2.9 and 3.2, respectively.

Claimant visited the emergency room again on [REDACTED] with an asthma attack and indicated that he ran out of his inhalers and steroids. His chest x-ray was normal. Claimant’s [REDACTED] lumbar spine CT showed “a mild superior endplate compression fracture of L2 with no significant retropulsion or kyphosis. Overall decreased bone density.”

On [REDACTED], Claimant visited the emergency room with back pain. These records showed that Claimant’s asthma was stable without any wheezing or shortness of breath. However, Claimant was diagnosed with steroid induced osteoporosis at this time. Claimant had a lumbar spine MRI which showed a “mild recent superior endplate compression fracture deformity at L2. No significant retropulsion. There is a horizontal fracture cleft and edema within the vertebral body. Congenitally narrowed spinal canal due to short pedicles.”

The objective medical evidence shows that Claimant has a combination of impairments that is “severe” for purposes of Step 2. Claimant has chronic asthma and bronchitis, and has had them since at least 2007. These records also demonstrate that his

continued steroid use has resulted in decreased bone density. Claimant has presented medical evidence that demonstrates he has some physical limitations on his ability to perform basic work activities. The medical evidence has established that Claimant has an impairment, or combination of impairments, that has more than a *de minimus* effect on his basic work activities. Further, the impairments have lasted continuously for 12 (twelve) months; therefore, Claimant is not disqualified from receiving MA-P benefits at Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. In light of the medical evidence, listings 3.02 and 3.03 are considered.

The evidence confirms treatment/diagnoses of asthma and bronchopulmonary aspergillosis. Listing 3.02 (chronic pulmonary insufficiency) requires a person have chronic obstructive pulmonary disease due to any cause, with the FEV₁ equal to or less than the values specified in table 1 corresponding to the person's height without shoes. Here, Claimant is 6'1" or 70 ³/₄ inches without shoes. Table 1 indicates that a person who is 70-71 inches must have an FEV₁ equal to or less than 1.55. Claimant's lowest FEV₁ value was 1.8 based on the medical record evidence. So Claimant does not meet listing 3.02. Listing 3.03 (asthma) provides that he must meet the definition of chronic asthmatic bronchitis under 3.02A or have "attacks" which are defined as prolonged symptomatic episodes lasting one or more days and requiring intensive treatment such as intravenous bronchodilator, antibiotic administration or prolonged inhalation bronchodilator therapy in a hospital, emergency room or equivalent setting. 3.03 requires attacks occur at least every 2 months or at least 6 times a year. Each in-patient hospitalization for longer than 24 hours to control asthma counts as two attacks and an evaluation period of at least 12 consecutive months must be used to determine the frequency of attacks.

An analysis of Claimant's records show that he did have several emergency room visits due to asthma attacks. However, Claimant does not meet the frequency requirements set forth in 3.03. Ultimately, it is found that Claimant's impairments do not meet the intent and severity requirement of a listed impairment and, therefore, Claimant can not be found disabled at Step 3.

Before Step 4, the Administrative Law Judge must determine Claimant's residual functional capacity to perform the requirements of his past relevant work. Here, Claimant has no significant work history. Claimant testified that he repaired the [REDACTED] following the [REDACTED] oil spill in 2009 or 2010. Claimant also testified that he worked in the construction industry but he was not specific regarding dates.

To determine the physical demands (exertional requirements) 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 additionally 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 (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) 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 with the demands of past relevant work. *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 (i.e. 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 fourth step in analyzing a disability claim requires an assessment of 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 is not considered. 20 CFR 416.960(b)(3).

Claimant has past relevant work as a construction worker (DOT 869.664-014), which is vocational expert classified as skilled with a medium exertion level per the *Dictionary of Occupational Titles*. In this case, the evidence confirms treatment/diagnoses of asthma and bronchitis. Claimant also has osteoporosis due to long term use of steroids. Claimant testified that he can walk ½ mile without assistance; grip/grasp without issue; sit without significant problems; lift/carry up to 20 pounds; standing is painful; and has difficulties bending and/or squatting. The objective findings do not show any physician imposed limitations.

This Administrative Law Judge finds sufficient evidence in this record that demonstrates Claimant is unable to perform his past relevant work. Claimant's construction work would be considered medium in nature. Claimant cannot engage in exertion due to his severe asthma and bronchitis. Although Claimant does not meet the listings for frequency, Claimant does have asthma attacks often. Claimant could not perform the physical demands associated with construction work with his pulmonary condition. Because the record evidence shows that Claimant is unable to do any past relevant work, the analysis proceeds to the fifth and final step.

At Step 5, this Administrative Law Judge must determine whether or not Claimant has the residual functional capacity to do any other work in the national economy considering his residual functional capacity, age, education, and work experience. At this point, the burden of proof shifts to the Department.

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969. Under the Medical-Vocational guidelines, a person closely approaching advanced age (age 50), with a high school education or the equivalent (GED), a skilled work history that is not transferrable, who is capable of sedentary work is not considered disabled pursuant to Vocational Rule 201.16.

After review of the entire record to include Claimant's credible testimony, it is found that, at this time, Claimant is able to maintain the physical and mental demands necessary to perform limited sedentary work as defined by 20 CFR 416.967(a). Limitations would most likely require a controlled environment with regard to air quality. This Administrative Law Judge finds that the objective medical evidence on the record fails to show that Claimant has no residual functional capacity. Consequently, Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not

established by objective medical evidence that he cannot perform sedentary work even with his impairments.

Claimant has not satisfied the burden of proof to show by competent, material and substantial evidence that he has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although Claimant has cited medical problems, the objective clinical documentation submitted by Claimant is not sufficient to establish a finding that the Claimant is disabled. There is no objective medical evidence to substantiate Claimant's assertion that his alleged impairment(s) is severe enough to reach the criteria and definition of disability. Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

The Department has established by the necessary competent, material and substantial evidence on the record that it acted in compliance with Department policy when it determined that Claimant is not eligible to receive Medical Assistance based on disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has appropriately established on the record that it acted in compliance with Department policy when it denied Claimant's application for Medical Assistance.

Accordingly, the Department's decision is **AFFIRMED**.

IT IS SO ORDERED.

/s/ _____

C. Adam Purnell
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: January 14, 2014

Date Mailed: January 14, 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

CAP/aca

cc:

