

**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.: 2014 14622
Issue No.: 2009, 4009
Case No.: ██████████
Hearing Date: March 12, 2014
County: Wayne County DHS (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, a telephone hearing was held on March 12, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████ Eligibility Specialist.

ISSUE

Whether the Department properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) and State Disability Assistances programs?

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 July 18, 2013, Claimant applied for MA-P and SDA.
2. On October 28, 2013, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant the Notice of Case Action dated October 31, 2013 denying the Claimant's MA-P application, retro application and SDA. Exhibit 1
4. On, November 20, 2013 Claimant submitted to the Department a timely hearing request.

5. On February 6, 2014, the State Hearing Review Team (“SHRT”) found the Claimant not disabled and denied Claimant’s request. Exhibit 2
6. Claimant at the time of the hearing was 50 years old with a birth date of [REDACTED]. At the time of the application, the Claimant was 49 years old and 4 months.
7. Claimant completed the 9th grade and a GED.
8. Claimant’s prior work experience included performing light industrial work stacking boxes weighing between 10 to 20 pounds. The Claimant also was employed as a home health provider doing in home care preparing meals and taking the patient to the doctor. The Claimant also worked in a lumberyard doing home shed assembly.
9. The Claimant has not alleged any mental disabling impairment.
10. Claimant alleges physical disabling impairments due to left leg, and calf pain and food drop with right open femur fracture from multiple gunshot wounds treated non operatively.
11. Claimant’s impairments have lasted or are expected to last for 12 months duration or more.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. 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 left leg, and calf pain and foot drop with right open femur fracture from gunshot wounds treated non operatively.

The Claimant has not alleged any mental disabling impairment.

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

On February 4, 2014, a DHS 49 was completed by the Claimant's trauma surgeon. The diagnosis was right open femur fracture from a gunshot wound treated non operatively. The examination noted that client walks with a boot for foot drop AFO orthosis, (right lower extremity. The doctor found the Claimant's medical condition to be stable and noted limitations were expected to last more than 90 days. The Claimant was evaluated as unable to stand and or walk less than 2 hours in an 8-hour work day. The Claimant could sit for about 6 hours in an 8-hour workday. The Claimant had full use of his hands and arms and use of his left foot and leg only for operation of foot controls. Progress notes were also attached, this note indicates that Claimant has chronic right peroneal nerve palsy based on the findings of an EMG of right leg which demonstrates the diagnosis of nerve palsy. The Doctor continued use of the foot boot.

On July 29, 2013, a DHS 49 was completed by the Claimant's trauma surgeon one month after the hospitalization for gunshot wounds. At that time the Claimant was noted as improving and could not stand or walk less than 2 hours in an 8 hour workday and was capable of lifting/carrying less than 10 pounds occasionally. The evaluation was identical to the DHS 49 completed in February 2014 referenced above. At the time, decreased sensation in the right lower extremity was noted with decreased range of motion in right lower leg with peritoneal friction. At the time, the limitation was not expected to last more than 90 days

An x-ray of the right femur was taken on 12/18/13 with an impression of unchanged appearance of the healed fracture deformity with intramedullary nail in the right femur as above, with mild right hip osteoarthritis. The nail is slightly bent retrograde and noted significant deformity. The wounds also required plastic surgery. Multiple bullet fragments remained in the soft tissue.

The Claimant also was seen on December 18, 2013 at [REDACTED] by a plastic and reconstructive surgery doctor for orthopedic aftercare for healing of a long bone fracture. Ongoing medical issues noted injury to peroneal nerve, foot drop right, post exploratory laparotomy, fraction femur distal, open wound of leg with tendon involvement, open would of knee, leg (not thigh) and ankle complicated.

The Claimant was hospitalized from June 6, 2013 through June 29, 2013 for multiple gunshot wounds to chest, abdomen, scrotum and bilateral lower extremities. Discharge diagnosis was open wounds to bilateral lower extremities and right distal femur fracture. The Claimant was discharge once the wounds were managed and follow up ongoing home care and follow up with plastic surgery, general surgery and orthopedic doctor. The Claimant was discharged with a walker. Weight bearing to left leg was only as tolerated.

The Claimant did undergo follow up. An exam on July 1, 2013 and July 3, 2013 noted minimal signs of healing with right femur fracture, open abdominal wound, 12 cm long. The Claimant was also undergoing physical therapy.

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 ankle and foot drop, however the listing requirements were not met or supported by the available medical evidence as the Claimant was still able to ambulate. 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 credibly testified to the following symptoms and abilities. The Claimant cannot do his laundry because he is unable to carry the laundry up and downstairs and cannot vacuum due to balance and inability to stand long periods. Claimant credibly testified that he could not walk more than a half block (20 to 30 yards) due to ankle, leg and calf pain. He could stand for no more than 10 minutes due to pain and needed to use a cane when standing. The Claimant could sit for 30 minutes but his right leg and ankle and toes swell. The Claimant testified he could bend at the waist with use of his cane. The heaviest weight the Claimant could carry was 10 pounds. The Claimant could squat a little and could shower and dress himself.

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 included performing light industrial work stacking boxes weighing between 10 to 20 pounds. The Claimant's also was employed as a home health provider doing in home care preparing meals and taking the patient to the doctor. The Claimant also worked in a lumber yard doing home shed assembly.

The Claimant's work was unskilled and is not transferable to skilled work, 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 due to the standing and lifting requirements of these jobs. 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 49 years old and was 4 months away from turning 50 years of age, and thus is considered a person approaching advanced age for MA-P purposes. The Claimant has a 9th grade education and obtained a GED and has been restricted with limitations on standing less than 2 hours in an 8 hour workday. 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 medical evidence presented, and the objective medical evidence, particularly the treating doctor's two evaluations and imposition of continuing limitations on standing/walking it is determined that the total impact caused by the physical impairment suffered by the Claimant must be considered and that the Claimant's is capable of sedentary work as he cannot meet the required standing or walking requirements for light work. In doing so, it is found that the combination of the Claimant's physical impairments in totality have a major impact on his ability to perform basic work activities.

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 201.12, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

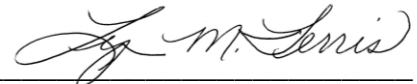
DECISION AND ORDER

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 July 18, 2013 and retro application if any and the SDA application, if not done previously, to determine Claimant's non-medical eligibility.
2. The Department shall issue a supplement to the Claimant for SDA benefits the Claimant is otherwise entitled to receive in accordance with Department policy.
3. A review of this case shall be set for April 2015.



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

Date Signed: April 3, 2014

Date Mailed: April 3, 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

2014 14622/LMF

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/tm

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]