

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

IN THE MATTER OF:



Reg. No.: 2013 61898
Issue No.: 2009, 4009
Case No.: [REDACTED]
Hearing Date: December 18, 2013
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 December 18, 2013, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Medical Contact Worker.

ISSUE

Whether the Department properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) program and the State Disability Assistance (SDA) benefit 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 22, 2013, Claimant applied for MA-P.
2. On July 18, 2013, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant the Notice of Case Action dated July 19, 2013 denying the Claimant's MA-P and SDA application. Exhibit 1

4. On July 31, 2013, the Claimant submitted to the Department a timely hearing request.
5. On September 20, 2013, the State Hearing Review Team (“SHRT”) found the Claimant not disabled and denied Claimant’s request.
6. An Interim Order was issued on December 20, 2013 ordering the Department to obtain hospitalization records and treatment records from the Claimant’s cardiologist.
7. On April 25, 2014, the State Hearing Review Team denied Claimant’s request and found Claimant not disabled.
8. Claimant at the time of the hearing was 54 years old with a birth date of [REDACTED]. Claimant height was 5’10” and weighed 210 pounds. The Claimant’s hospitalization records noted obesity with a BMI of 30.
9. Claimant completed high school and one year of community college. Claimant’s prior work experience consists of a work as a construction laborer doing demolition construction, renovation work, pipe cutting lifting and carrying between 30 to 100 pounds. The Claimant also was a roofer and was required to strip shingles and carry shingles to the job site carrying 80 pounds. Claimant also did handyman work including concrete work tearing out and removing concrete with a sledgehammer and digging.
10. Claimant alleges physical disabling impairments due to hypertension atrial fibrillation shortness of breath and congestive heart failure.
11. Although the Claimant’s testified at the hearing that he suffers from depression no mental impairments were listed on the Claimant’s February 22, 2013 application.
12. 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).

The Claimant alleges physical disabling impairments due to hypertension atrial fibrillation, shortness of breath and congestive heart failure.

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

The Claimant's treating doctor, a family practice practitioner, completed a DHS 49 Medical Examination Report on January 29, 2014. This doctor has treated the Claimant since 2010. The exam was completed and the diagnosis was chronic kidney disease, atrial fibrillation, cardiomyopathy hypertension and depression. The treating doctor imposed restrictions which included occasionally lifting less than 10 pounds. No restrictions on sitting were imposed and assistive devices were not deemed necessary. The limitation that was imposed was expected to continue for 90 days and the Claimant's condition was rated as stable. The report indicated that the Claimant needed assistance with laundry, shopping and housework.

The Claimant was admitted to the hospital for a one-day stay with chest pain on December 2, 2013. The pain was on left side and while lying down. The notes indicate he was admitted two weeks prior with the same condition. The notes indicate that Claimant is noncompliant with his medication. It is not clear whether this is due to lack of insurance. The impression was hypertension currently stable, atypical chest pain with no evidence of acute coronary syndrome with normal ejection fraction. Patient has dilated ischemic cardiomyopathy. Mild hypokalemia, status post replacement. The patient needs **health** appropriate screening as an outpatient. The Claimant's CHADS2 score is now one indicating moderate condition for risk of stroke. The history taken at the admission indicates cessation of cocaine use after 35 years and reduction of alcohol consumption to a couple of beers every other day. In in-hospital psychiatric evaluation rendered a diagnosis of alcohol abuse and cocaine abuse and a GAF score of 50. At the time of the admission the Claimant's ejection fraction was 60 to 65% and he was on beta-blockers and Lasix. The Claimant's cardiovascular examination was within normal limits with noted cardiomyopathy. The results of a left heart cardiac catheterization performed in 2010 noted noncritical coronary artery disease with moderate diffuse left ventricular systolic function. The left ventricular angiogram showed global hypokinesis with an ejection fraction of 30%.

The Claimant was also admitted to the hospital in February 2013 for a four-day stay due to atrial fibrillation due to cardiomyopathy. At that time a transesophageal acute cardiogram and cardioversion were performed. The conclusions were no evidence of an appendage thrombi, successful cardioversion converting the patient from atrial fibrillation to normal sinus rhythm, mild to moderate left ventricular systolic dysfunction

with LVEF estimated at about 40%. The Claimant's use of drugs and alcohol at that time made him a poor candidate for long-term anticoagulation medications. The Claimant was noted and evaluated as a risk for falls. At that time the impression was atrial fibrillation with rapid ventricular response with Chads2 rate still uncontrolled and required dilated cardiomyopathy – compensated most likely by alcohol use. Ejection fraction 30% was per notes done in September 2011.

Here, Claimant has satisfied requirements as set forth in steps one, 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 4.00 cardiovascular system (4.05 Recurrent Arrhythmias and 3.00 respiratory system, (3.01 Chronic Pulmonary Insufficiency) were examined in light of the medical evidence presented, however the listings were not met. Therefore, vocational factors will be considered to determine Claimant's residual functional capacity to do past relevant work.

In the present case, Claimant has been diagnosed with physical impairments due to hypertension, atrial fibrillation, shortness of breath and congestive heart failure.

Claimant has a number of symptoms and limitations, as cited above, as a result of these conditions. Claimant's treating physician family doctor noted a lifting restriction of less than 10 pounds occasionally and no noted restrictions were made regarding standing, walking or sitting. It does not appear that the report was fully completed and is at times inconsistent noting that the Claimant needed assistance with laundry, shopping and housework.

Claimant credibly testified to the following symptoms and abilities: the Claimant could **stand 15 minutes and sit for 45 minutes. The Claimant due to shortness of breath** testified he could only walk for approximately a quarter of a block and had difficulty climbing stairs, requiring him to take breaks and climb slowly. Climbing stairs causes pain in his left side left arm and shoulder and chest. The Claimant could not perform a squat as it made him dizzy. The heaviest weight the Claimant could carry was 5 pounds. At the time of the hearing, the Claimant testified under oath that he was no longer smoking and was off drugs and alcohol. The Claimant's testimony was deemed credible.

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 required lifting of between 30 to 80 pounds, climbing ladders, standing on his feet, and using a sledgehammer. Given the Claimant's limitations with walking and standing and sitting which he credibly testified to, shortness of breath, and the lifting limitation imposed by his treating family practice physician and climbing stairs require abilities and

capabilities that based on the limitations presented can no longer be 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 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 54 years old and, thus, considered to be an individual of advanced age for MA-P purposes. The Claimant has a high school education with one year of community college, however most of his jobs have been unskilled and are classified as heavy to medium work categories. The Claimant's past work being unskilled makes transferability not an issue. Currently, the Claimant has been restricted by his doctor to occasionally lifting less than 10 pounds occasionally.

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 is not inconsistent with the other substantial evidence in the case record. 20 CFR § 404.1527(d)(2). Some deference was given by the undersigned to objective medical and clinical observations of the Claimant's treating physician/ family practice doctor, however the evidence was somewhat incomplete. Additionally the existence of continued drinking of alcohol which prohibits the use of anti-coagulant medications is also of concern given the Claimant's cardiac related medical conditions. It could not be determined from the medical evidence whether this treatment would improve the Claimant's conditions or what effect if any such treatment would have thus it cannot be said with certainty that alcohol would be material.

After a review of the entire record, including the Claimant's credible testimony and medical evidence presented, and the objective medical evidence evaluation provided by the Claimant's treating family practice doctor who restricted his lifting, these considerations and evidence place the Claimant at a sedentary activity level. The Claimant was 54 years of age at the time of the application and has a high school education and history of unskilled work with non-transferable skills, and thus, is considered an individual closely approaching advanced age. 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 201.04 that the Claimant is found disabled for purposes of the MA-P and SDA at Step 5.

The State Disability Assistance 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.

In this case, the Claimant is found disabled for purposes of the MA-P program; therefore, he is found disabled for purposes of SDA benefit program.

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 March 13, 2012.

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 MA-P and SDA application dated February 22, 2013 if not done previously, to determine Claimant's non-medical eligibility.
2. The Department shall issue a supplement to the Claimant for benefits the Claimant was otherwise entitled to receive in accordance with Department policy.

3. A review of this case shall be set for May 2015.



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

Date Signed: May 28, 2014

Date Mailed: May 29, 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

LMF/tm

cc:

