

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014 23282
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: April 10, 201482
County: Wayne County 82-82

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on April 10, 2014 from Detroit, Michigan. Participants on behalf of Claimant included the Claimant and [REDACTED], the Claimant's Authorized Hearing Representative (AHR). Participants on behalf of the Department of Human Services (Department) included [REDACTED] Eligibility Specialist.

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 4, 2013, Claimant applied for MA-P and retro MA-P to July 2012.
2. On October 28, 2013, the Medical Review Team denied Claimant's request.
3. The Department issued a notice of the Notice of Case Action dated October 31, 2013 denying the Claimant MA-P application.
4. On January 17, 2014 the Claimant's AHR submitted to the Department a timely hearing request.

5. On March 17, 2013 the State Hearing Review Team SHRT found the Claimant not disabled and denied Claimant's request.
6. Claimant is 59 years old with a birth date of [REDACTED].
7. Claimant completed the 11th grade and completed a GED.
8. The Claimant has alleged physical disabling impairments including prostate cancer post prostate robotic prostatectomy, with urine and bowel incontinence and completed radiation treatments due to a positive surgical margin.
9. The Claimant has not alleged any mental disabling impairments
10. Claimant has employment experience (last worked 2013) as a tire technician, mounting and dismounting tires for cars and trucks. The Claimant also drove a tow truck doing tire repairs. In both these jobs claimant was on his feet most of the day. The claimant's last employment as a tire tech required lifting of between 25 to 100 pounds and 45 pounds on average tires.

CONCLUSIONS OF LAW

MA-P is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department administers MA-P pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (RFT).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect

judgments about the nature and severity of the impairment(s), including symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is

not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the claimant's residual functional capacity. 20 CFR 404.1520(e). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, the trier must consider all of the claimant's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the claimant has the residual functional capacity to do his/her past relevant work, then the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Here, Claimant has satisfied requirements as set forth in step one, of the sequential evaluation. The Claimant is not currently engaging in substantial gainful activity and is not employed.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples 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.

Id.

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). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). 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).

The Claimant has alleged impairments due to prostate cancer post prostate prostatectomy and receipt of radiation treatments due to positive surgical margin, and urine and bowel incontinence.

A summary of the medical evidence presented follows.

The Claimant was admitted to the hospital on February 4, 2013 for a two day stay after a prostatectomy in stable condition.

The Claimant completed receiving radiation treatments in December 2013 due to prostate cancer after a laprascopic prostatectomy with bilateral pelvic lymph node dissection. The Claimant was seen on August 30, 2013 for consultation after robotic assisted radical prostatectomy with a gleason score of 7 tumor. At time of surgery he had a positive resection margin on the left lateral prostate extraprostatic extension. Three lymph nodes were negative for metatastic carcinoma. At the time of the exam the patient presents with positive margin after prostatectomy. The patient reported urgency nocturia, 1 to 2 times per night, and dribbling with stress incontinence. Erectile dysfunction without improvement with Cialis. Prostate exam revealed smooth non indurated prostate bed with no evidence of disease. The exam noted a CT dated 11/12/12 showed abdomen subtle focus of increased radiotracer accumulation in the left iliac bone near the sacroiliac joint which may represent degenerative changes, metastasis felt to be less likely with thickening of the urinary bladder wall which may be

secondary to bladder outlet obstruction or an inflammatory process. The exam concluded with plan for radiation.

The Claimant completed radiation therapy on December 4, 2013 and was seen on December 26, 2013 by his doctor. The impression after treatment notes the patient did extremely well with minimal toxicity.

The Claimant was seen in February 12, 2014 and was determined to have a positive clinical response to radiation treatment. The notes indicate the Claimant has done extremely well since completing radiation therapy. At the time of the exam with unchanged urgency, and some daytime frequency and occasional dribbling. No other GI or GU complaints. No back pain, no bone pain or other complaints. He has had a good PSA nadir despite the positive margin. PSA in May of 2013 was less than 0.1.

No other medical records were submitted. The claimant was represented by an Authorized Hearing Representative who did not offer additional evidence or request that the Department seek additional medical evidence or testing.

At the hearing the Claimant testified to fatigue and shortness of breath and a reaction to a shot received as part of his prostate treatment causing sweating and urinary incontinence.

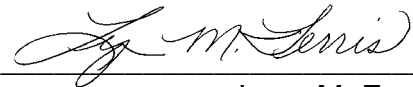
As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented medical evidence establishing that he does have physical limitations on his ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. That being stated, there was no evidence to show that the Claimant's condition is expected to result in death, or that it will continue, or not improve, within 12 months. To establish disability, 20 CFR 416.909 requires the impairment last for a continuous period of 12 months or longer. The prostatectomy occurred in February 2013 and as of February 2014 the Claimant's recovery after surgery and radiation was that Claimant was doing extremely well, with complaints of urgency and frequency, with occasional dribbling. Here, the medical records document continued improvement with the completion of radiation therapy. Although the Claimant did have a serious surgery and did have a diagnosis of prostate carcinoma with positive margins after surgery, in light of the durational requisite, the Claimant is found not disabled at Step 2 with no further analysis required.

The Claimant may apply for Medical Assistance and may be eligible for Healthy Michigan medical assistance.

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 October 4, 2013 the date of his application and any retroactive period (to July 2012) ongoing.

Accordingly, the Department's decision is hereby AFFIRMED.



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

Date Signed: May 2, 2014

Date Mailed: May 2, 2014

NOTICE: 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)

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 was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

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cc:

