

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

IN THE MATTER OF:

████████████████████
████████████████████
████████████████████

Reg. No.: 2013-21974
Issue No.: 2009
Case No.: ██████████
Hearing Date: April 11, 2013
County: Oakland (04)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, an in person hearing was held on April 11, 2013, from Pontiac, Michigan. Participants on behalf of Claimant included the Claimant. ██████████ ██████████, of ██████████ ██████████ ██████████, the Claimant's Authorized Hearing Representative, also appeared on behalf of the Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████ Eligibility Specialist.

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 12, 2012 Claimant applied for MA-P and retro MA-P (September 2012).
2. On November 29, 2012, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant the Notice of Case Action dated December 4, 2012 denying the Claimant's MA-P application. Exhibit 1

4. On January 4, 2013, Claimant's AHR submitted to the Department a timely hearing request.
5. On March 11, 2013, the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on April 11, 2013 ordering additional medical evidence including a consultative examination be scheduled by the Department. The matter was submitted to the state hearing review team on March 18, 2014.
7. May 19, 2014 the State Hearing Review Team denied Claimant's request and found Claimant not disabled.
8. Claimant at the time of the hearing was 38 years of age with an [REDACTED] birth date. The Claimant is now 39 years old. Claimant's height was 5'8" and weighed 360 pounds.
9. Claimant completed a GED.
10. Claimant's prior work experience was janitorial for an apartment complex including general maintenance snow shoveling, also worked as a machine operator and a delivery unloader for UPS and delivery of appliances. The Claimant last worked in 2006 as a put potato bagger.
11. The Claimant has not alleged any mental disabling impairment.
12. Claimant alleges physical disabling impairments due to lumbar pain and lumbar back surgery, arthritis in his right shoulder, swelling of both lower extremities, high blood pressure diabetes and a pulmonary embolism in 2010 and lupus.

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 Claimant alleges physical disabling impairments due to lumbar pain and lumbar back surgery, arthritis in his right shoulder, swelling of both lower extremities, high blood pressure, diabetes and a pulmonary embolism in 2010 and lupus.

The Claimant has not alleged any mental disabling impairments.

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

A consultative medical examination was conducted on May 3, 2013. At that time, the Claimant was evaluated by a family practice doctor. At the time of the examination, the diagnosis was hypertension, diabetes mellitus, and obesity. The Claimant was listed as stable and was given the following limitations: the Claimant could frequently lift up to 20 pounds (two thirds of an eight-hour day), and occasionally lift 25 pounds. The Claimant could stand or walk at least two hours in an eight-hour day. Claimant had no restrictions in the use of his hands, arms or feet in operation of foot controls or repetitive actions. The narrative of the report indicated back surgery in 2000, with radiating pain down both lower extremities with tingling and numbness. Although the examiner noted no swelling, a notation that the examination was limited because of body habitus affected the test. At the time of the examination, the Claimant weighed 372 pounds and was 5'8" in height. Blood pressure was also noted to be 210/134. The report noted that the Claimant does have significant medical problems. The assessment concluded lumbar radiculopathy, uncontrolled high blood pressure, diabetes, right S I joint pain, morbid obesity and tobaccoism. The plan indicated that the Claimant did Need care for his diabetes and high blood pressure. An x-ray of the lumbar spine was taken and was noted that the film was underpenetrated and an examination with proper penetration should be performed on a clinical basis.

The Claimant was admitted to the hospital on September 29, 2012 for a four-day stay. The Claimant was seen due to complaints of chest pain associated with shortness of breath. The history reported was lupus, anti-coagulant positive diagnosed two years ago when admitted for pulmonary embolism. The Claimant was noncompliant with his medications due to lack of insurance. The exam on admission showed blood pressure of 200/106 and was started on heparin due to his pulmonary embolism history. On admission, his physical examination did not disclose any abnormalities. An admission note noted acute renal failure on top of chronic kidney disease. The Claimant was seen by a cardiologist with an impression of unstable angina due to the patient's positive history of lupus anticoagulant, premature coronary artery disease to be ruled out. The patient was scheduled for a left heart catheterization along with bilateral coronary angiogram. At the time, deep vein thrombosis was ruled out. The Claimant was also diagnosed with acute pericarditis with a planned catheterization. The patient was also

diagnosed with diabetes and started on medications. The Claimant had a heart catheterization which showed no occlusion in the coronary arteries and 10oh cardiogram showing an ejection fraction of 55 to 60% with no significant changes in cardiac structure. A final report x-ray of the chest noted that there were no significant cardiac or pulmonary abnormalities and was otherwise unremarkable with no active pulmonary disease. A renal ultrasound was also performed on both kidneys with no evidence of renal artery stenosis. An ultrasound of both lower extremities was also performed due to swelling and there was no evidence of deep vein thrombosis in either extremity. A final report regarding the cardiac catheterization found normal coronary arteries and normal systolic function.

Here, Claimant has satisfied requirements as set forth in steps one and two, as Claimant was not employed at the time of the hearing, having last worked in 2007 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 1.04 Disorders of the Spine, was examined in light of the Claimant's low back lumbar pain and positive straight leg raising, however the necessary medical evidence such as an MRI and the severity requirements such as nerve root compression were not demonstrated. Based upon the objective medical evidence, referenced above, the Claimant does not meet the listing.

Claimant has expressed a number of symptoms and limitations, as cited above, as a result of these conditions. Claimant testified to the following symptoms and abilities: the Claimant testified that he could not walk more than one block, could not perform a squat and could bend at the waist only a little. The Claimant could shower dress by himself. The Claimant could carry up to 5 pounds. The Claimant also had shoulder pain in his right shoulder and his legs and feet swell bilaterally. The Claimant could sit for 10 minutes and then would experience back pain and feet swelling. The Claimant further testified that he could not do vacuuming or grocery shopping in part due to his shoulder and inability to walk any distance. By contrast to this testimony, the consultative examiner found that the Claimant could lift frequently up to 20 pounds, and did note the Claimant could stand and/or walk at least two hours in an eight-hour workday.

The fourth step of the analysis to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the Claimant from doing past relevant work. In the present case, Claimant's past employment was janitorial and maintenance work for an apartment complex, including general maintenance, snow-shoveling, floor washing and waxing painting and moving furniture. Claimant also worked as a machine operator and a delivery unloader for [REDACTED] and delivery of appliances in this position he moved furniture between 100 to 200 pounds and unloaded packages for [REDACTED] between five and 100 pounds. The Claimant last worked in 2006 as a put potato bagger. The Claimant's past relevant work was unskilled. As described by plaintiff the prior employment required that he be on his feet

much of the day and in several of the positions required lifting and standing capabilities that have been medically restricted by the consultative examination including standing two hours in an eight hour day and lifting no more than 20 pounds frequently. This prior work requires abilities and capabilities that based on the limitations presented by the Claimant's medical exam by the consultative doctor cannot be any longer achieved by the Claimant. Therefore, it is determined that the Claimant is no longer capable of past relevant work. Thus a Step 5 analysis is required 20 CFR 416.920(e).

In the final step of the analysis, the trier of fact must determine if the Claimant's impairment(s) prevent the Claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the Claimant's:

1. residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and
3. the kinds of work which exist in significant numbers in the national economy which the Claimant could perform despite her limitations. 20 CFR 416.966.

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

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

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little; a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, the Claimant was 38 years old and, thus, considered to be a younger individual for MA-P purposes. The Claimant has a GED and has back pain and physical restrictions with standing and walking more than 2 hours in an 8-hour workday, and although he was evaluated as capable of lifting up to 20 pounds frequently, he cannot perform the other requirements necessary for light work. 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).

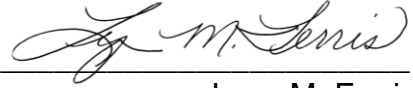
After a review of the entire record, including the Claimant's testimony and medical evidence presented, and the objective medical evidence provided by the consultative examiner, it is determined that the total impact caused by the physical impairment suffered by the Claimant must be considered and that the Claimant is capable of sedentary work as he cannot meet the required standing or or lifting requirements for light work. The medical evidence presented did not support much of the Claimant's testimony regarding his current physical capabilities.

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 201.24, it is found that the Claimant is not disabled for purposes of the MA-P program at Step 5.

DECISION AND ORDER

Accordingly, the Department's decision is hereby AFFIRMED.



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

Date Signed: June 11, 2014

Date Mailed: June 13, 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

2013-21974/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]