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

IN THE MATTER OF:



Reg. No.: 2014-21917

Issue No(s).: 2009

Case No.: Hearing Date:

Date: June 11, 2014

County: Branch

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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, telephone hearing was held on Wednesday, June 11, 2014, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included

<u>ISSUE</u>

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA)?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

- 1. On November 26, 2013, the Claimant applied for MA-P with retroactive MA-P to August 2013.
- On December 27, 2013, the Medical Review Team (MRT) denied the Claimant's application for MA-P with retroactive MA-P stating that the Claimant was capable of performing other work under the Medical/Vocational Grid Rule 202.14 per 20 CFR 416.920(f).
- 3. On January 2, 2014, the Department Caseworker sent the Claimant a notice that his application was denied.

- 4. On January 10, 2014, the Department received a hearing request from the Claimant, contesting the Department's negative action.
- On April 2, 2014, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA-P and retroactive MA-P for the Claimant. The Claimant is years old with a and a history of semi-skilled work. He alleges disability due to coronary artery disease and ruptured disc. Based on the DDE, the Claimant retains the capacity to perform light work with for vocational profile (Claimant approaching advanced age, is denied using Vocational Rule 202.14 as a guide. Retroactive MA-P benefits are denied.
- 6. The Claimant is a year old whose date of Claimant is 5'9" tall and weighs 220 pounds. The Claimant has lost 33 to 36 pounds in the past year the cause of heart condition. The Claimant has completed the high school where he was not special education, but can read or write and do basic math. The Claimant was last employed as a caregiver from . The Claimant was previously employed as a farm worker.
- 7. The Claimant's alleged impairments are coronary artery disease quadruple heart bypass surgery on and a ruptured disc.

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.

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled.

We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

... Medical reports should include --

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

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) Signs are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) Laboratory findings physiological, are anatomical, psychological phenomena which can be shown by the use of medically acceptable laboratory diagnostic techniques. Some of techniques these diagnostic include chemical tests. electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

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

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from

anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

...Your residual functional capacity is what you can still do despite limitations. If you have more than one impairment, we will consider all of your impairment(s) of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based on all of the relevant evidence.... 20 CFR 416.945(a).

...This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s).... 20 CFR 416.945(a).

...In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence.... 20 CFR 416.929(a).

...In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you... We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work.... 20 CFR 416.929(a).

If you have more than one impairment, we will consider all of your impairments of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. This assessment of your

capacity for work is not a decision on whether you are disabled but is used as a basis for determining the particular types of work you may be able to do despite your impairment. 20 CFR 416.945.

...When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work. 20 CFR 416.945(b).

Federal regulations require that the Department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"Disability" is:

...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

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

Step 1

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). At Step 1, the Claimant is not engaged in substantial gainful activity and has not worked since 2011. Therefore, the Claimant is not disqualified from receiving disability at Step 1.

Step 2

Secondly, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Basic work activities means, the abilities and aptitudes necessary to do most jobs. Examples of these include:

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;
- Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimus* hurdle" in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

The objective medical evidence on the record further substantiates the Administrative Law judge findings.

, the Claimant was admitted to On with a The indications for procedure were recurrent episodes of chest discomfort consistent with unstable angina, abnormal stress test compatible with ischemia in the inferior wall and apex, shortness of breath, obesity, and hypertension. The procedures performed were left heart catheterization, bilateral selective coronary angiography, LG angiography, selective left internal mammary artery angiography to plan for coronary artery bypass surgery, and a 6 - French Angio-Seal placement in the right femoral artery. The surgeon's final impression were two vessel obstructive coronary artery disease involving the right coronary artery and the LAD diagonal bifurcation system as detailed above with mid- to - distal left main coronary artery disease, patent left internal mammary artery by LIMA angiography, normal capital LV systolic function with estimated ejection fraction of 55% and mild basal inferior hypokinesis, and successful the number 6 - French Angio - Seal placement in the front femoral artery. The Claimant will be referred for coronary artery bypass surgery. The Claimant's discharge diagnosis is worth chest pain with abnormal treadmill cardio light study, coronary and your graph E on August 1, 2013 that demonstrated multi-vessel coronary artery disease, preserved left ventricle Larner systolic function, asymptomatic Brekke Cardia, congestion and productive cough, likely secondary to bronchitis. The

Claimant was discharged home in stable condition where he was advised to consume a low fat, low cholesterol diet. His activity level was nothing strenuous. Department Exhibit 6 –7 and 10-11.

On the Claimant was admitted to the discharge date of the Claimant was admitted to the Claimant's admitting diagnoses were multivessel coronary artery disease and hypertension. His discharge diagnoses were multivessel coronary artery disease, transient wide complex tachycardia, dyslipidemia, and hypertension. His condition on discharge was stable. The Claimant was not to drive for the next 30 days or left any objects over 8 pounds. He was advised not to abuse tobacco in any form. He was also to undergo cardiac rehab in 30 days. Department Exhibit 24-25.

On to his coronary artery disease. The Claimant recently underwent a four vessel coronary artery bypass graft surgery with a LIMA to the LAD vein grafts to the diagonal vein grafts to the obtuse marginal and vein graph to the right coronary artery. The Claimant stated he started to have more energy. He is having difficulty sleeping throughout the night, which is a new problem. He is currently attending cardiac rehabilitation. The Claimant stated he has no more chest pain. The Claimant's blood pressure in the right arm was 124/90. The Claimant had an essentially normal physical examination. The Claimant's cardiac status was listed as stable, but he was to continue cardiac rehabilitation. Another reassessment would be performed in six months. Department Exhibit 32 – 36.

On . The Claimant was given a graded exercise stress test at . The Claimant had a normal sinus rhythm, and anterior T wave inversions, and low voltage resting . The Claimant's exercise was T wave amplitude decreases during exercise with no ST segment depressions. The Claimant's recovery was baseline immediately post exercise. His BP response was normal. The radiologist's interpretation was no evidence of exercise-induced ischemia at 60% of predicted maximal heart rate. The Claimant was determined to have a fair exercise capacity. Department Exhibit 37.

on behalf of the Claimant. The Claimant had a recent diagnosis of coronary artery disease. The Claimant had an essentially normal physical examination, but his treating physician noted his recent bypass surgery. His clinical impression was that the Claimant was improving with limitations that were not expected to last more than 90 days. The Claimant could occasionally lift less than 10 pounds, but never 10 pounds. The Claimant could stand and all walk less than two hours in an eight hour workday. There were no medical devices required and needed for ambulation. The Claimant could use neither hands/arms for pushing/pulling, but both hands/arms for simple grasping, reaching, and fine manipulation. The Claimant could use both feet/legs for operating foot/leg controls. The Claimant had no mental limitations. In addition, the Claimant could meet his needs in the home. Department Exhibit 38-39.

The Claimant's chief complaints were heart problems and back pain. The independent medical examiner stated that the Claimant had mild tenderness, mostly over the paravertebral muscles on the right side. He had mild facet hypertrophy without probable tenderness. Neurologically, he appears stable although he does complain of numbness from the knees down, which was not reproducible on examination today. He was able to perform orthopedic maneuvers and his gait was well preserved. At this point, supportive care and avoidance of heavy repetitive lifting would be indicated. The Claimant appears stable from a cardiopulmonary standpoint. There were no findings of heart failure. His blood pressure was relatively stable. He denied any active symptoms. He is undergoing cardio pulmonary rehab and does appear compliant. Department exhibit B-I.

At Step 2, the objective medical evidence in the record indicates that the Claimant has established that he has a severe impairment. The Claimant has been diagnosed with cardio artery disease where he underwent four surgery in The Claimant has shown subsequent improvement since. He no longer has chest pains and has had increased in energy. The Claimant does have issues with his back, which would prevent him from performing repetitive heavy lifting. The Claimant is capable of performing at least light work. Therefore, the Claimant is not disqualified from receiving disability at Step 2. However, this Administrative Law Judge will proceed through the sequential evaluation process to determine disability because Step 2 is a *de minimus* standard.

Step 3

In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the Claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Claimant's medical record will not support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). This Administrative Law Judge finds that the Claimant's impairments do not rise to the level necessary to be listed as disabling by law. Therefore, the Claimant is disqualified from receiving disability at Step 3.

Step 4

Can the Claimant do the former work that he performed within the array ars? If yes, the Claimant is not disabled.

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the Claimant's impairment(s) prevents Claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings

that the Claimant testified that he does perform most of his daily living activities. The Claimant does not feel that his condition has worsened where he feels like he is getting better. The Claimant stated that he has no mental impairments. The Claimant does not or has ever smoked or use illegal or illicit drugs. He stopped drinking where before he was an occasional drinker. The Claimant did not know what type of work that he could do.

At Step 4, this Administrative Law Judge finds that the Claimant has established that he cannot perform any of his prior work. His past employment was at the medium to heavy level as The Claimant has also been employed as a farm worker at the heavy to medium level. The Claimant is capable of performing at least light work, but his previous employment was at the medium to heavy level. Therefore, the Claimant is not disqualified from receiving disability at Step 4. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether or not the Claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

Step 5

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the Claimant's impairment(s) prevents 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 you 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 his/her limitations. 20 CFR 416.966.

...To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very heavy. These terms have the same meaning as they have in the <u>Dictionary of Occupational Titles</u>, 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).

...To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. 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).

Unskilled work. Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength.... 20 CFR 416.968(a).

The objective medical evidence on the record is sufficient that the Claimant lacks the residual functional capacity to perform some other less strenuous tasks than in her previous employment or that she is physically unable to do any tasks demanded of her. The Claimant's testimony as to her limitation indicates her limitations are exertional.

At Step 5, the Claimant can meet the physical requirements of light work, based upon the Claimant's physical abilities. Under the Medical-Vocational guidelines, a closely approaching advanced age individual with a high school education, and an unskilled work history, who is limited to light work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.13. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the Claimant's physical impairments, the Administrative Law Judge finds that the Claimant could perform light work and that the Claimant does not meet the definition of disabled under the MA program.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant \boxtimes not disabled for purposes of the MA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is \boxtimes AFFIRMED.

Carmon J. Fabrie

Carmen G. Fahie Administrative Law Judge for Maura Corrigan, Director Department of Human Services

Date Signed: <u>7/14/14</u>

Date Mailed: 7/14/14

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 Claimant;
- 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

CGF/tb

