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

IN THE MATTER OF:

[redacted]

Reg. No.: 2014 23138
Issue Nos.: 2009
Case No.: [redacted]
Hearing Date: April 24, 2014
DHS County: Wayne DHS (82-82)

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 April 24, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. [redacted], of [redacted], the Claimant's Authorized Hearing Representative also appeared. Participants on behalf of the Department of Human Services (Department) included [redacted], Medical Contact Worker.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P) benefit program?

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 September 12, 2013, the Claimant submitted an application for public assistance seeking MA-P and retro MA-P benefits (June 2013).

2. On October 18, 2013, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1)

3. The Department notified the Claimant's AHR of the MRT determination on October 18, 2013.

4. On December 13, 2013, the Department received the Claimant's written request for hearing.

5. On September 26, 2013, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)

6. An Interim Order was issued June 19, 2014. The new evidence was submitted to the State Hearing Review Team on June 19, 2014.

7. On July 14, 2014, the State Hearing Review Team found the Claimant not disabled.

8. The Claimant alleges physical disabling impairments due to obesity (BMI 45), congestive heart failure, hypertension, high blood pressure, sleep apnea, gout and chronic asthma.

9. At the time of hearing, the Claimant was 41 years old with an [redacted] birth date; Claimant is now 42. Claimant is 6'3" in height; and weighed 350 pounds.

10. The Claimant completed high school. The Claimant's past work was performing security guard and security guard services for a factory, for a casino, at [redacted].

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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 purusant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impariment which meets federal Supplemental Security

Income (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.

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). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a) (4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If impairment does not meet or equal a listed impairment, an individual's residual functional capacity is

assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity and, therefore, is not ineligible for disability benefits under Step 1.

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 916.920(a)(4)(ii); 20 CFR 916.920(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 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(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 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 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 alleges physical disabling impairments due to obesity (BMI 45), congestive heart failure, hypertension and high blood pressure, sleep apnea, and gout and chronic asthma.

A summary of the medical evidence follows.

On April 25, 2014, the Claimant's cardiologist completed a DHS 49 Medical Examination Report. The current diagnosis was congestive heart failure, hypertension poorly controlled due to lack of medication, chronic kidney disease, obesity, diabetes mellitus and sleep apnea. At the time of the examination, the Claimant was 6'2" tall and weighed 350 pounds. (BMI 45). The cardiologist referred to an echocardiogram from July 2013 which noted severe LVH. The clinical impression was that the Claimant was not improving and needed a sleep apnea evaluation. Limitations were imposed which were expected to last more than 90 days. The Claimant could lift 20 pounds occasionally and could stand and or walk at least two hours in an eight-hour workday. The Claimant could sit about six hours in an eight hour workday and had no restrictions with regard to the use of his hands or arms. The Claimant could not operate foot controls with his left leg due to gout exacerbations. The evaluator determined that the Claimant could not meet his needs in the home and needed assistance with cooking, cleaning, medication management, climbing stairs, and bathing, due to shortness of breath and lack of energy.

On April 10, 2014, the Claimant was seen in the emergency department for left foot pain. The Claimant was discharged home after receiving pain medication and his blood pressure was reduced. The clinical impression was left foot pain, possible gout, arthritis exacerbation and chronic hypertension.

On April 16, 2014, the Claimant was seen again in the emergency department for gouty arthritis. The Claimant's pain prescription was never picked up by the Claimant. The musculoskeletal examination of his left lower extremity revealed a tender first

metacarpal joint. Full range of motion was noted. Distal pulses were intact. Capillary refill is appropriate. The cardiovascular system was noted as slightly tachycardic with no murmur or gallop or rub. The Claimant was discharged home.

On April 21, 2014, the Claimant was seen in the emergency department complaining of left ankle, foot, and great toe pain. The evaluation notes that the Claimant works in protective services. He apparently intervened in an altercation to try and break up a fight and states that he may have been struck or bumped his left ankle during the scuffle. The notes indicated that on the morning of the admission, when he tried to go to work, he could not stand or walk on his left foot with ankle pain. A musculoskeletal examination was conducted which noted minimal soft tissue swelling at the ankle. Some limited range of motion of left ankle and dorsiflexion and plantar flexion was limited secondary to pain. Some discomfort to palpation over the joint of the great left toe in diffuse tenderness of the ankle was noted. There was no obvious joint effusion. The Claimant was found to be completely neurovascularly intact. He is able to weight bear but with pain. No clinical evidence to suggest any fracture or dislocation. No imaging is indicated on an emergency basis. The Claimant was discharged home in stable condition with crutches for assistance with his walking, weight bearing as tolerated on his left foot.

On April 10, 2014, the Claimant presented at the emergency department due to lightheadedness and shortness of breath. This was a second visit of the day to the emergency department with a prior visit due to left foot pain. Claimant presented with no chest pain, nausea but with dizziness. An ECG was performed which was essentially normal and appeared unchanged when compared to a prior ECG. The Claimant was to be admitted for observation but did not wish to remain in the hospital and left contrary to medical advice.

The Claimant was seen in the emergency department on February 8, 2014 due to chest pain. The chest pain was described as pressure like feeling, and had been constant for 24 hours. The Claimant was offered to be admitted to the hospital due to serial cardiac biomarkers and because he was hypertensive. At that time, the Claimant was discharged against medical advice.

On February 4, 2014, the Claimant was admitted to the hospital due to shortness of breath; the history noted cardiomyopathy with ejection fraction of 30%. At the time, he did have an ejection fraction of 30% and a borderline stress test that was positive in July 2013. At the time, the Claimant's renal function was also bad. The evaluation for kidney disease was chronic kidney disease stage III, likely from hypertension. At the time of this admission, a hypertensive emergency was noted, currently blood pressure was in the 190 – 220 systolic. The assessment also noted deep venous thrombosis. During his hospitalization, the Claimant was on Bipap machine and restarted on home

medications. At the time of discharge, the Claimant had improved and was off the Bipap machine. At discharge, his status was noted as improving.

A consultative examination was completed on January 8, 2014. The cardiovascular examination was normal as was the musculoskeletal examination. The impression was history of hypertension, systolic and diastolic heart failure. Current ejection fraction is about 50%. He is independent at home for activities of daily living. He is currently stabilized and was receiving treatment for heart failure. Based on today's exam, the patient can sit, stand and walk for eight hours a day, but needs to rest every 2-3 hours, for 10 to 15 minutes. The patient can lift at least 10 to 15 pounds of weight without difficulty. Eight hours a day he should avoid climbing, squatting and bending.

On July 1, 2013, the Claimant was seen at the emergency department with a diagnosis of acute combined systolic and diastolic heart failure, with benign essential hypertension. The Claimant was admitted for a three-day stay. A repeat 2-D echocardiography showed persistent concentric LVH with impaired diastolic function and ejection fraction of 45 to 50%. The echocardiogram noted severe concentric LVH, mildly decreased left ventricular systolic function, with pseudo-normal filling pattern of the left ventricle consistent with moderate diastolic dysfunction. At the time of the admission the BMI was 43.2. His New York Heart Association classification was Class III. The Claimant's chronic kidney disease was noted at stage V. It also was noted that the recent stress test in February 2013 was incomplete, as the patient could not tolerate the stress part of the study.

On June 30, 2013, the Claimant was admitted to the hospital due to shortness of breath and was admitted to cardiology for further evaluation and management. A chest x-ray of the heart and chest noted mild cardiomegaly with mild pulmonary vascular congestion. At the time of the admission, the Claimant's chronic heart failure secondary to systolic dysfunction showed an ejection fraction of 40% and diastolic dysfunction, chronic kidney disease, asthma present, with complaints of shortness of breath.

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 objective medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. Accordingly, the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis 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. The Claimant asserts disabling impairments due chronic heart failure were reviewed with the applicable listing.

Listing

4.02 Chronic heart failure while on a regimen of prescribed treatment, with symptoms and signs described in 4.00D2. The required level of severity for this impairment is met when the requirements in both A and B are satisfied.

A. Medically documented presence of one of the following:

1. Systolic failure (see 4.00D1a(i)), with left ventricular end diastolic dimensions greater than 6.0 cm or ejection fraction of 30 percent or less during a period of stability (not during an episode of acute heart failure); or

2. Diastolic failure (see 4.00D1a(ii)), with left ventricular posterior wall plus septal thickness totaling 2.5 cm or greater on imaging, with an enlarged left atrium greater than or equal to 4.5 cm, with normal or elevated ejection fraction during a period of stability (not during an episode of acute heart failure);

AND

B. Resulting in one of the following:

1. Persistent symptoms of heart failure which very seriously limit the ability to independently initiate, sustain, or complete activities of daily living in an individual for whom an MC, preferably one experienced in the care of patients with cardiovascular disease, has concluded that the performance of an exercise test would present a significant risk to the individual; or

2. Three or more separate episodes of acute congestive heart failure within a consecutive 12-month period (see 4.00A3e), with evidence of fluid retention (see 4.00D2b(ii)) from clinical and imaging assessments at the time of the episodes, requiring acute extended physician intervention such as hospitalization or emergency room treatment for 12 hours or more, separated by periods of stabilization (see 4.00D4c); or

3. Inability to perform on an exercise tolerance test at a workload equivalent to 5 METs or less due to:

a. Dyspnea, fatigue, palpitations, or chest discomfort; or

b. Three or more consecutive premature ventricular contractions (ventricular tachycardia), or increasing frequency of ventricular ectopy with at least 6 premature ventricular contractions per minute; or

c. Decrease of 10 mm Hg or more in systolic pressure below the baseline systolic blood pressure or the preceding systolic pressure measured during exercise (see 4.00D4d) due to left ventricular dysfunction, despite an increase in workload; or

d. Signs attributable to inadequate cerebral perfusion, such as ataxic gait or mental confusion.

4.00 B 2. What evidence of CHF do we need?

a. Cardiomegaly or ventricular dysfunction must be present and demonstrated by appropriate medically acceptable imaging, such as chest x-ray, echocardiography (M-Mode, 2-dimensional, and Doppler), radionuclide studies, or cardiac catheterization.

(i) Abnormal cardiac imaging showing increased left ventricular end diastolic diameter (LVEDD), decreased EF, increased left atrial chamber size, increased ventricular filling pressures measured at cardiac catheterization, or increased left ventricular wall or septum thickness, provides objective measures of both left ventricular function and structural abnormality in heart failure.

(ii) An LVEDD greater than 6.0 cm or an EF of 30 percent or less measured during a period of stability (that is, not during an episode of acute heart failure) may be associated clinically with systolic failure.

(iii) Left ventricular posterior wall thickness added to septal thickness totaling 2.5 cm or greater with left atrium enlarged to 4.5 cm or greater may be associated clinically with diastolic failure.

(iv) However, these measurements alone do not reflect your functional capacity, which we evaluate by considering all of the relevant evidence. In some situations, we may need to purchase an ETT to help us assess your functional capacity.

(v) Other findings on appropriate medically acceptable imaging may include increased pulmonary vascular markings, pleural effusion, and pulmonary edema. These findings need not be present on each report, since CHF may be controlled by prescribed treatment.

b. To establish that you have chronic heart failure, your medical history and physical examination should describe characteristic symptoms and signs of pulmonary or systemic congestion or of limited cardiac output associated with the abnormal findings on appropriate medically acceptable imaging. When an acute episode of heart failure is triggered by a remediable factor, such as an arrhythmia, dietary sodium overload, or high altitude, cardiac function may be restored and a chronic impairment may not be present.

> (i) Symptoms of congestion or of limited cardiac output include easy fatigue, weakness, shortness of breath (dyspnea), cough, or chest discomfort at rest or with activity. Individuals with CHF may also experience shortness of breath on lying flat (orthopnea) or episodes of shortness of breath that wake them from sleep (paroxysmal nocturnal dyspnea). They may also experience cardiac arrhythmias resulting in palpitations, lightheadedness, or fainting.
>
> (ii) Signs of congestion may include hepatomegaly, ascites, increased jugular venous distention or pressure, rales, peripheral edema, or rapid weight gain. However, these signs need not be found on all examinations because fluid retention may be controlled by prescribed treatment.

Ultimately, it is found that the Claimant suffers from some medical conditions; however, the Claimant's impairments do not meet the intent and severity requirement of Listing 4.02, as the test data do not demonstrate the listing is met, although the Claimant does have symptoms such as shortness of breath. A careful review of the medical evidence was made and it was found that the listing was not met. Therefore, the Claimant cannot be found disabled, or not disabled, at Step 3. Accordingly, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id*.; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s) and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). 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. *Id.* Jobs are

sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though 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. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id*.

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity to the demands of past relevant work must be made. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (e.g., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The

determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The Claimant's prior work history consists of employment performing security work including, performing security guard and security guard services for a factory, for a casino, a [redacted]. Most of the labor jobs involved walking and patrolling, and the Walmart job allowed the Claimant to sit 30% of the time while watching a camera.

In light of the Claimant's testimony and records, and in consideration of the Occupational Code, the Claimant's prior work is classified as unskilled light work.

The Claimant testified that he is able to walk about half a block. The Claimant testified that he could bend at the waist, he could perform a squat, can tie his shoes, but experiences shortness of breath and cannot touch his toes. The Claimant can shower and dress himself. The Claimant testified that he does have gout and experiences pain in his legs. The Claimant further testified that the heaviest weight he could carry was 8 pounds. The Claimant stated he could stand 10 minutes and could sit 30 minutes. The Claimant can cook simple meals but is limited to the time standing while cooking. The Claimant's treating cardiologist completed a DHS 49 and imposed the following restrictions. The Claimant could lift up to 20 pounds occasionally. The Claimant could stand or walk at least 2 hours in an 8-hour workday. The Claimant could sit about 6 hours in an 8-hour work day. The Claimant had no limitations with regard to use of his hand and/or arms. The Claimant was restricted as regards the use of the left leg and foot due to gout exacerbation. It was determined that the Claimant could not meet his needs in the home and needed assistance with cooking, cleaning medication management, climbing stairs and bathing due to shortness of breath and lack of energy.

If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920. In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is not able to return to past relevant work; due in large part the standing and patrolling for long periods. Thus, the fifth step in the sequential analysis is required.

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). The Claimant is 42 years old and, thus, is considered to be an individual of younger age for MA purposes. The Claimant graduated from high school. 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).

In this case, the evidence reveals that the Claimant has a medical impairment due to obesity (BMI 45), congestive heart failure, hypertension and high blood pressure, sleep apnea, gout and chronic asthma.

Based upon the foregoing objective medical evidence completed by his doctor, it appears that the Claimant could sit about 6 hours, and does so most days and is able to walk around his home as necessary and testified he could lift up to 8 pounds. The medical evaluation performed by the Claimant's doctor in April 2014, however, finds Claimant capable of lifting 20 pounds only occasionally, and no weight range is selected for frequent lifting. Further, the restrictions imposed for activities of daily living are significant. Sedentary work requires lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). 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. *Id.* Jobs are sedentary, if walking and standing are required occasionally and other sedentary criteria are met.

In consideration of the foregoing and in light of the objective limitations, it is found that the Claimant does not retain the residual functional capacity for work activities on a regular and continuing basis to meet at the physical and mental demands required to perform sedentary work.

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), Deference was given by the undersigned to objective medical testing and clinical observations of the Claimant's treating physician, who is a cardiologist. Consideration was also given to the Claimant's extreme obesity, with a BMI of 45. After a review of the entire record, including the Claimant's testimony and medical evidence presented, and the objective medical evidence provided by the Claimant's treating physician, who places the Claimant at less than sedentary, the total impact caused by

the physical impairment suffered by the Claimant must be considered. In doing so, it is found that the combination of the Claimant's physical impairments, including chronic heart failure, extreme obesity, uncontrolled hypertension, sleep apnea, gout, chronic asthma and kidney disease have a major impact on his ability to perform basic work activities. Accordingly, it is found that the Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a). After review of the entire record, and in consideration of the Claimant's age, education, work experience and residual functional capacity, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

DECISION AND ORDER

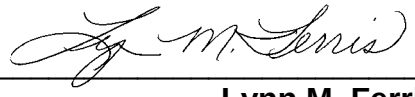
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled for purposes of the MA –P benefit program.

Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department is ORDERED to initiate a review of the application dated September 12, 2013, and applicable retro period if not done previously, to determine Claimant's non-medical eligibility.

2. A review of this case shall be set for August 2015.



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

Date Signed: August 6, 2014

Date Mailed: August 6, 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: [redacted]