

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

IN THE MATTER OF:



Reg. No.: 2014-21908
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 5, 2014
County: Wayne County DHS (18)

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 three way telephone hearing was held on June 5, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant and [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 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 March 28, 2013, Claimant applied for MA-P.
2. On October 24, 2013, the Medical Review Team denied Claimant's request.
3. The Department issued a Notice of Case Action dated October 29, 2013, denying the Claimant's MA-P application. Exhibit 1
4. On January 10, 2014, Claimant's AHR submitted to the Department a timely hearing request.

5. On March 13, 2014, the State Hearing Review Team (SHRT) found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on June 5, 2014 and additional medical evidence was sent to SHRT on July 8, 2014.
7. On August 5, 2014, the SHRT found the Claimant not disabled.
8. Claimant is [REDACTED] years old with a birth date of [REDACTED]. The Claimant will be [REDACTED] years of age in 21 days.
9. Claimant completed the ninth grade.
10. Claimant has employment experience which involved heavy manual labor including roofing and roof tear off. The Claimant also installed windows for a home improvement company.
11. Claimant alleges physical impairments due to chronic low back pain, COPD, chronic abdominal pain and multiple abdominal surgeries and hernia repairs and stroke.
12. The Claimant has alleged mental disabling impairments including memory loss with no treatment.
13. Claimant's limitations have lasted for 12 months or more.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

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

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

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

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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

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

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

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

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

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

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of regulations if it

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

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

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

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

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

Here, Claimant has satisfied requirements as set forth in steps one, two and three of the sequential evaluation. The Claimant is not currently engaging in substantial gainful activity and is not employed; thus, is not disqualified at Step 1.

The Claimant alleges physical disabling impairments due to chronic low back pain, COPD, chronic abdominal pain and multiple abdominal surgeries and hernia repairs and stroke.

The Claimant alleges mental disabling impairments including memory loss with no treatment.

A summary of the medical evidence presented follows.

A Consultative Examination was performed on June 17, 2014. At the time of the examination the Claimant complained of hypertension, stroke and back and leg problems. The physical examination was essentially within normal limits. The impression given by the examiner was hypertension without current medication. Blood pressure under fair control. Stroke – there are no sequelae noted at this time. Speech problems are no longer present. He does have occasional memory problems. Examinee has chronic back and leg pain. Hirschsprungs disease history of disease given and surgery on three occasions with the last operation in 2011 with occasional abdominal pain. The examiner also referred to range of motion sheets which were included which indicated that flexion of the lumbar spine was only 70° and the remainder was within normal limits the examiner indicated the claimant's abilities were not limited but noted that the claimant complained of pain. Straight leg raising testing was negative. The use of a cane was not clinically indicated.

The DHS 49 Medical Examination Report was also completed by the consultative examiner which noted slow gait and use of cane a finding that the claimant was stable and could occasionally lift up to 20 pounds. The examiner noted that the claimant could stand or walk at least two hours in an eight hour workday and sit six hours in an eight hour workday. No restrictions with regard to use of hands or arms, legs or foot controls were imposed. The examiner also noted the claimant needed no assistance with meeting his personal needs in the home.

The claimant was seen by a gastroenterologist on March 29, 2013 and was going through alcohol withdrawal at the time he was seen. The impression was continuous chronic alcoholism with active problems of COPD, hypertension, degenerative arthritis, stroke, chronic back pain, polysubstance abuse and liver disease. The claimant was also evaluated for shortness of breath. The hospitalization records note surgery due to perforated colon done in North Carolina in 2012. There were no hospitalization records provided with regard to this procedure.

The claimant was admitted to the hospital on March 24, 2013 and was discharged April 15, 2013. X-rays of the spine were taken noting mild L4 – L5 disc space narrowing. Mild anterior wedging of T12 and how one present and likely long standing the impression was mild anterior wedging of T12 and L1 long-standing and L4 – L5 disc space narrowing. The diagnosis was COPD, hypertension, degenerative arthritis of the spine, stroke, chronic back pain continuous chronic alcoholism, polysubstance abuse, liver disease, and Wernicke Korsakoff syndrome (alcoholic), and ETOHism. Claimant was discharged from the hospital in stable condition.

The claimant was seen in the emergency room with abdominal pain. At the time he reported to the emergency room and incisional hernia in the midline was noted with some bowel wall thickening. Necessity of surgery was noted. Although was not an emergency.

The claimant had a laparoscopic ventral hernia repair also performed on June 10, 2013. Claimant tolerated the procedure well.

The claimant was admitted to the hospital on June 10, 2013 with abdominal pain and was seen due to extremely high blood pressure. At the time the claimant was not undergoing any alcohol withdrawal. Claimant was medicated with an IV of Metoprolol to decrease systolic blood pressure to around 150.

The claimant also was seen in the emergency room in June 2013 due to a small bowel obstruction hype and hypertension which was out of control. At the time the claimant's admission was as a result of abdominal pain.

A colonoscopy and decompression due to small towel obstruction was performed on June 19, 2013. The claimant was hospitalized for a two day stay at that time. This procedure was performed after an incisional hernia procedure was performed on June 10, 2013. At the time of the admission the claimant presented with nausea, and distended abdomen with discomfort. At the time the liver enzymes were within normal range. After the decompressive colonoscopy the abdomen distention was markedly less and the claimant had numerous bowel movements. The claimant was discharged home in stable condition. A CT of the abdomen and pelvis confirmed the narrowing of the ileum with considerable serious distention of the transverse colon measuring up to 12 cm with development of abdominal and pelvic ascites with changes of the cirrhosis of the liver with mesenteric infiltrative changes. In echocardiogram was performed which was within normal limits.

Claimant was seen on February 21, 2013 with continued complaints of back pain. On examination no swelling was noted and was discharged home from the emergency

The claimant was seen on January 31, 2013 due to back pain. The pain at that time was present in the lumbar spine without radiation. On examination back pain was noted due to pain and spasm. The claimant was discharged home with pain medication.

The claimant was admitted to the hospital on October 25, 2012 due to abdominal pain and alcohol withdrawal. Patient was intubated on October 26, 2012 and underwent a tracheotomy on November 8, 2012. On November 6, 2012 the Claimant was operated on for High grade distal mechanical small bowel due to small bowel obstruction to a loop of the distal ileum. On November 8, 2012 the Claimant was operated on for respiratory failure. The Claimant was in the hospital for several weeks and not all the records were provided for review. After this last hospitalization the Claimant received physical therapy due to weakness and decreased cognitive skills and difficulty walking.

After a review of the medical evidence, it is determined that the Claimant has met the severity requirement and de minimis standard of Step 2, as the evidence demonstrates that he has a serious impairment.

Listings 1.04 Disorders of the Spine, Genitourinary Impairments 5.05 Inflammatory Bowel Disease were reviewed in light of the medical evidence, and it is determined that none of the listings were met.

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 performing manual labor performing roofing and roof tear off and window installation. Both such positions required Claimant to stand most of the day and lift upwards of 80 pounds, carrying roofing shingles, and replacement windows weighing 20 to 60 pounds, and climbing ladders. This Administrative Law Judge finds, based on the medical evidence, it is determined that the Claimant is not capable of the physical or mental activities required to perform any such position and cannot perform past relevant work, and 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 53 years of age and thus, will be considered to be closely approaching advanced age for MA-P purposes.

The Claimant has a 9th grade education and credibly testified that he did not write well and has difficulty with math particularly division. Additionally, the Claimant's skills are non-transferable. The consultative examiner also found the Claimant to be limited in his abilities, evaluating the Claimant as capable of only sedentary work as set forth above. Chronic alcohol use was not deemed material.

At the hearing, Claimant's testimony was found credible. Claimant testified that he could stand 20 to 30 minutes, and sit for 20 to 30 minutes due to lower back pain. The Claimant uses a cane, although not prescribed, and could walk one block, cannot squat and cannot tie his shoes. Not all of these restrictions were confirmed by the consultative examination; however, the Claimant was evaluated as capable of sedentary work only by the Consultative examiner. 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). Individuals approaching advanced age (age 50-54) may be significantly limited in vocational adaptability if they are restricted to sedentary work. 20 CFR 416.963(d).

After a review of the entire record, including the Claimant's testimony and medical evidence presented, as well as multiple admissions for abdominal problems, it is determined that Claimant's impairments have a major effect on his ability to perform basic work activities. 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 201.09, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

DECISION AND ORDER

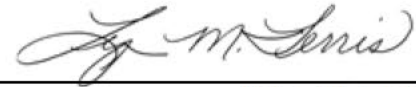
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled not disabled for purposes of the MA-P and/or SDA benefit program.

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 March 28, 2013, if not done previously, to determine Claimant's non-medical eligibility.

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



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

Date Signed: September 5, 2014

Date Mailed: September 5, 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:

