

1. On November 28, 2012, Claimant submitted an application for public assistance seeking MA-P benefits.
2. On March 1, 2013, the Medical Review Team (MRT) found Claimant not disabled.
3. On March 5, 2013, the Department sent Claimant a Notice of Case Action denying the application based on MRT's finding of no disability.
4. On April 12, 2013, the Department received the AHR's timely written request for hearing.
5. On July 1, 2013, and November 22, 2013, SHRT found Claimant not disabled.
6. Claimant alleged physical disabling impairment due to renal failure and ulcer in his arm.
7. At the time of hearing, Claimant was 59 years old with [REDACTED] birth date.
8. Claimant stated he was 6'1" in height and weighed 180 pounds.
9. Claimant is a high school graduate.
10. Claimant's last employment was as a hi-lo driver in a factory, which he last held in 1999.
11. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

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.

MA-P benefits are available to disabled individuals. BEM 105 (January 2014), p. 1; BEM 260 (July 2013); BEM 261 (July 2013), p. 1. In order to receive MA-P benefits based upon disability, Claimant must be disabled as defined in Title XVI of the Social

Security Act (SSA). 20 CFR 416.901. Disability for MA-P purposes 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). A person who meets this standard for at least ninety days is eligible for SDA. BEM 261 (July 2013), p. 2.

In order to determine whether or not an individual is disabled, federal regulations require application of a five-step sequential evaluation process. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider (1) whether the individual is engaged in substantial gainful activity (SGA); (2) whether the individual's impairment is severe; (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) whether the individual has the residual functional capacity to perform past relevant work; and (5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to 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).

In general, the individual has the responsibility to establish a disability 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, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. 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, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

As outlined above, the first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered as not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Claimant has not engaged in SGA activity during the period for which assistance might be available. Therefore, Claimant is not ineligible under Step 1 and the analysis continues to Step 2.

Step Two

Under Step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for MA-P means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 12 months. 20 CFR 416.922.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). 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); see also *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. A disability claim obviously lacking in medical merit may be dismissed. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). However, under the *de minimus* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs* at 862.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). In the present case, Claimant alleges in his application physical disability due to renal failure and arm ulcer. At the hearing, he also noted that he suffered from cellulitis, high blood pressure (tied to the cellulitis), and an aortic aneurysm.

██████████ Claimant went to his primary care clinic complaining of chronic pain in his hands and left ankle. ██████████ he visited a podiatrist to evaluate left ankle and heel x-ray and abnormal x-ray. Claimant advised the doctor that he had mild arthritis in his feet and ankles but he had no specific foot pain. The doctor found pes planus deformity of the foot and minimal osteoarthritic changes of the ankle joint. The doctor noted no open lesions; normal skin tone and texture with scarring from

healed medial venous ulcer; muscle strength of 5/5; and no calf pain with bilateral compression.

██████████ Claimant went to the emergency department with abdominal pain. His ventral hernia was reduced, his pain decreased, and he was discharged in stable condition.

He returned the next day with complaints of abdominal pain at the site of a previous incisional hernia and was hospitalized ██████████. A CT scan of the chest, abdomen and pelvis showed two 4-5 mm calcifications within the lumen of the abdominal aorta of unknown etiology, possibly atherosclerotic, stable emphysematous changes of the lungs, bilaterally, and stable appearing fat-containing ventral abdominal wall hernia. The CT evaluation of the thoracic aneurysm was limited due to the lack of IV contrast. A CTA of the chest and abdomen revealed a descending aortic dissection beginning at the left subclavian and continuing through to the left common iliac, which had progressed from a previous view. Claimant disclosed subcutaneous cocaine ingestion on a daily basis. His diagnoses on discharge were reduced incisional hernia and chronic stable descending thoracic aneurysm. Claimant was discharged with slight abdominal pain and advised to comply with medication and maintain his blood pressure.

██████████ Claimant was seen at the emergency department, complaining of left tricep abscess from injecting heroin into the subcutaneous tissue one week before. He was placed on clindamycin and sent home before lab results showing creatinine levels of 6.9 were reviewed. The emergency department attempted to call Claimant to have him return to the hospital. It was unable to reach Claimant, but, because he was unable to obtain his prescription, he returned to the emergency department ██████████ complaining of pain of 8 out of 10 and seeking to have the abscess reevaluated.

Claimant was hospitalized ██████████ with a discharge diagnosis of acute kidney injury/renal injury, hepatitis C, and left tricep abscess secondary to IV drug use. Admission notes noted a 15-pound weight loss in the last 1 ½ weeks, decreased appetite, and limited urination to once daily for the past 24 hours. The history noted that Claimant had significant IV heroin use. At discharge, Claimant stated that he felt no abdominal pain, and an examination of his extremities showed no edema.

██████████ Claimant was referred to a cardiac thoracic surgeon concerning the thoracic aortic aneurysm. Medical records show that this condition was stable.

██████████ Claimant had a physical in order to obtain medical clearance to have teeth extracted. The doctor concluded that Claimant's blood pressure was stable on current medical regimen; his glucose level was elevated (HBA1C was at 6.7%); his aortic aneurysm was stable; he was being referred to nephrology for his chronic kidney disease; and he did not want interferon treatment for his hepatitis C.

It is noted that the AHR was afforded the opportunity to provide additional medical documents in support of Claimant's claim that he was disabled. This additional documentation included Claimant's [REDACTED] [REDACTED] hospitalization records and his medical records from [REDACTED] [REDACTED]. A review of all the medical documentation provided shows some ongoing medical conditions. Under the de minimus standard necessary to establish a severe impairment under step 2, the medical evidence presented is sufficient to establish that Claimant has satisfied the requirements under step 2, and the analysis will proceed to step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

In light of evidence showing diagnosis of, and treatment for, acute kidney injury and arm abscess, listings 6.02 (impairment of renal function) and 8.00 (skin disorder) were considered but the medical record does not show that Claimant's condition meets, or equals, the severity of either listing. In light of evidence on the record showing an aortic aneurysm, Listing 4.10 (aneurysm of aorta or major branches) was also considered but, because there was evidence showing that the condition was controlled, it did not meet, or equal, the severity necessary to meet the listing. Listing 4.00(h)(6).

Because Claimant's impairments did not meet, or equal, a listing, the analysis proceeds to the next step.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under step 3, before proceeding to step 4, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. Impairments, and any related symptoms, may cause physical and mental limitations that affect what a person can do in a work setting. 20 CFR 416.945(a)(1). RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s) and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4). The total limiting effects of all impairments, including those that are not severe, are considered. 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants 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).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If the limitations and restrictions imposed by the individual's impairment(s) and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). To determine the exertional requirements, or physical demands, of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a).

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.

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. 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. If someone can do light work, ... 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.

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, ... he or she can also do sedentary and light work.

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, ... he or she can also do medium, light, and sedentary work.

Very heavy work.

Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, ... he or she can also do heavy, medium, light, and sedentary work.

20 CFR 416.967.

In this case, while Claimant indicated some difficulty standing in the documentation submitted to the Department, there was no medical evidence concerning limitations resulting from Claimant's medical conditions. In the absence of any restrictions identified in the medical documentation, it is found that Claimant can, at a minimum, perform medium work.

Step Four

The fourth step in analyzing a disability claim requires an assessment of Claimant's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). 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). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. 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).

As determined in the RFC analysis above, Claimant is limited to a minimum of medium work activities. While Claimant reported his last employment as a hi-lo driver, he testified that he had not worked in the 14 years prior to the hearing. Because Claimant had no recent work experience, Claimant cannot be found disabled, or not disabled, at step 4 and the assessment continues to step 5.

Step 5

In step 5, an assessment of Claimant's RFC 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 this point in the analysis, the burden shifts from Claimant to the Department to present proof that Claimant has the RFC to obtain and maintain 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). The age for younger individuals (under 50) generally will not seriously affect the ability to adjust to other work. 20 CFR 416.963(c). If the individual can adjust to other work, then there is no disability. Disability is found if an individual is unable to adjust to other work. *Id.*

In this case, Claimant maintains the RFC for work activities on a regular and continuing basis to meet the physical and mental demands required to perform medium work as defined in 20 CFR 416.967(c). At the time of hearing, Claimant was 59 years old and, thus, considered to be an advanced-age individual for MA-P purposes. Claimant is a high school graduate. After review of the entire record and in consideration of Claimant's age, education, work experience, RFC, and using the Medical-Vocational Guidelines (20 CFR 404, Subpart P, Appendix II) as a guide, specifically Rule 203.14, Claimant is found **not** disabled at Step 5.

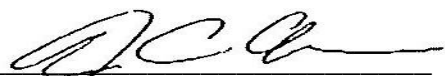
Therefore, Claimant is found **not** disabled for purposes of the MA-P program. It is noted that, although there was some discussion on the record concerning Claimant's eligibility for cash assistance under the State Disability Assistance (SDA) program, Claimant's November 2012 application was for MA-P only, not SDA. Furthermore, the AHR's April 12, 2013, request for hearing concerned only the Department's denial of the MA-P application. Accordingly, Claimant's eligibility for SDA was not presented for review and is **not** considered in this Hearing Decision.

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 not disabled for purposes of the MA-P benefit program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Claimant not disabled for purposes of the MA-P benefit program.

Accordingly, the Department's determination is AFFIRMED.



Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: October 8, 2014

Date Mailed: October 9, 2014

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides or has its principal place of business in the State, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

ACE/pf

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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