

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

IN THE MATTER OF:

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Reg. No.: 2014-19845
Issue No.: 2009
Case No.: ██████████
Hearing Date: April 9, 2014
County: Wayne (82-18)

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 9, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████

The record was extended to allow additional relevant medical evidence to be submitted. Claimant waived timeliness. The additional medical evidence was received and submitted to the State Hearing Review Team (SHRT) for review prior to this decision being issued.

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 September 26, 2013, Claimant applied for MA-P.
2. On December 9, 2013, the Medical Review Team denied Claimant's request.
3. On December 26, 2013, Claimant submitted to the Department a request for hearing.

4. SHRT denied Claimant's request.
5. Claimant is 49 years old.
6. Claimant completed education through high school and obtained an Emergency Medical Technician certificate.
7. Claimant has employment experience (last worked February 10, 2010) as a semi-truck driver which required him to sit the majority of the time, limited standing/walking and lifting up to 100 pounds.
8. Claimant's limitations have lasted for 12 months or more.
9. Claimant suffers from T7-9 fracture and suicide attempt [REDACTED], depression, hypertension, positive straight leg on both sides.
10. Claimant has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.
11. The Claimant is 5'9" in height and weighs 320 pounds. This yields a Body Mass Index (BMI) of 47.25.

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.

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. However, Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Therefore, vocational factors will be considered to determine Claimant's residual functional capacity to do relevant work.

In the present case, Claimant has been diagnosed with T7-9 fracture and a suicide attempt (2010), depression, hypertension, and positive straight leg on both sides. Claimant has a number of symptoms and limitations, as cited above, as a result of these conditions. Claimant's records include the following.

██████████ Claimant was seen by his physician. Claimant weighed 278 pounds and his blood pressure was noted to be 110/60. Examination of his back showed some tenderness over the mid-to-lower spine. SLR was negative on both sides and deep tendon reflex were 2+ in both lower extremities.

██████████ Claimant was seen in the emergency room for suicidal ideation. Claimant was assessed a GAF of 20 and diagnosed with major depression with psychosis. He was discharged ██████████

██████████ office visit document revealed that Claimant had benign essential hypertension. He was 363 pounds. Blood pressure was 110/70. No tenderness noted over the lower thoracic and lumbar spine. Straight leg test was positive on both sides. His mood was depressed.

██████████ Claimant was seen for a mental health medication review. Claimant was noted to have good eye contact, good grooming and speech was normal. His thought processes were logical and coherent. No delusional thought, no psychosis, no obsessive or compulsive thought. He had a sad and blunted affect.

██████████ Claimant was hospitalized and treated for depression with suicidal and homicidal ideation. He had not been taking his medications. He was hearing voices, unable to sleep, irritable and drinking. He was admitted with a GAF of 25 and discharged with a GAF of 55. His diagnosis at discharge was acute exacerbation of schizoaffective schizophrenia.

Claimant testified to the following symptoms and abilities: shaking hands, hearing voices, anxiety, depression, visions of dead relatives, uses a cane to walk, poor balance, can walk a half block, can stand 10-15 minutes, pain in his back both between his shoulder blades and his lumbar region, weak grip in hands especially bad on his left side, he can sit 15-30 minutes, not able to bend and stoop, struggles with dressing, needs help with household chores, needs help with grocery shopping, isolates himself from others, avoids friends and family, nervous around groups of people, struggles with appetite, able to drive, constant suicidal thoughts, homicidal thoughts regarding his wife, daughter in-law and son in-law. He was recently hospitalized ██████████ for mental health conditions.

This Administrative Law Judge does take into account Claimant's complaints of pain in that the diagnoses do support the claims. Subjective complaints of pain where there are objectively established medical conditions that can reasonably be expected to produce the pain must be taken into account in determining a claimant's limitations. *Duncan v Secretary of HHS*, 801 F2d 847, 853 (CA6, 1986); 20 CFR 404.1529, 416.929.

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 as a semi-truck driver which required him to sit the majority of the time, limited standing/walking and lifting up to 100 pounds. This Administrative Law Judge finds, based on the medical evidence and objective, physical, and psychological findings, that Claimant is not capable of the physical or mental activities required to perform any such position. 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).

See *Felton v DSS* 161 Mich App 690, 696 (1987). Once the claimant makes it to the final step of the analysis, the claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 732 F2d 962 (6th Cir, 1984). Moving forward, the burden of proof rests with the State to prove by substantial evidence that the claimant has the residual function capacity for SGA.

After careful review of Claimant's medical record and the Administrative Law Judge's personal observation of Claimant at the hearing, this Administrative Law Judge finds that Claimant's exertional and non-exertional impairments render him unable to engage in a full range of sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P, Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v. Heckler*, 743 F2d 216 (1986).

The record supports a finding that Claimant does not have the residual functional capacity for SGA. The Department has failed to provide vocational evidence which establishes that, given Claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which Claimant could perform despite his limitations. Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of September 2013.

Accordingly, the Department's decision is hereby REVERSED and the Department is ORDERED to initiate a review of the application dated September 26, 2013, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform

Claimant of the determination in writing. A review of this case shall be set for November 2015.



Jonathan W. Owens
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: October 21, 2014

Date Mailed: October 21, 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

JWO/pf

2014-19845/JWO

cc:

[REDACTED]
[REDACTED]
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