

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-29245
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: July 16, 2014
County: Wayne County DHS (17)

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, an in-person hearing was held on July 16, 2014, from, Detroit Michigan. Participants on behalf of Claimant included Claimant and his Authorized Hearing Representative, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED], an Eligibility 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 April 19, 2013 , Claimant applied for MA-P and retro MA-P to March 2013.
2. On October 25, 2013, the Medical Review Team denied Claimant's request. A notice of case action was issued on November 12, 2013.
3. On February 7, 2014, Claimant submitted to the Department a request for hearing.
4. April 11, 2014 the State Hearing Review Team (SHRT) denied Claimant's request.

5. Claimant is 57 years old with a birth date of [REDACTED]. The Claimant at the time of the hearing weighed 150 pounds and was 6'1".
6. Claimant completed High School.
7. Claimant has employment experience (last worked 2003), as a bus boy at [REDACTED]. The Claimant also performed cleanup and janitorial at a laundry company, as well as packing laundry. The Claimant worked in an industrial setting making pallets, and as a nail gun operator.
8. Claimant's limitations have lasted for 12 months or more.
9. Claimant suffers from HIV AIDS, kidney problems, ankle pain, asthma and dizziness due to medications.
10. Claimant has some limitations on physical activities involving standing, walking, bending, lifting, and stooping.

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. Listing 14.08 Immunodeficiency virus (HIV) infection was reviewed but the Medical evidence did not support a finding that the listing was met. 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 HIV AIDS, pain in right ankle post open reduction of fibula, shortness of breath due to asthma and dizziness. Claimant has a number of symptoms and limitations, as cited above, as a result of these conditions. Claimant's medical records do demonstrate the above conditions.

A Medical Examination Report was completed July 28, 2014 by the Claimant's infectious disease treating Doctor. The diagnosis was AIDS. The clinical impressions

noted that the Claimant was improving and that limitations were still imposed, and that the limitations were expected to last for more than 90 days. The Claimant could occasionally lift 10 pounds; he could stand and/or walk at least two hours in an eight hour day. The Claimant had full use of his hands and arms, but could not operate foot or leg devices or controls. No assistive devices were medically indicated as required. The limitations were imposed based on a physical examination. The Doctor also noted that the Claimant's social interaction with others was limited. The examiner noted that the Claimant was alert, but very thin. Medical testing data for HIV was confirmed positive.

The Claimant was seen on May 3, 2013, for an injury to his right ankle due to a fall. On examination, the ankle demonstrated moderate swelling. The Claimant was placed in a short leg cast with his foot in a 90° dorsiflexion. The cast was non-weight bearing. Claimant was to be seen in two weeks for follow-up and x-rays.

The Claimant was operated on May 22, 2013, for a displaced fracture of the right distal fibula. An open reduction and internal fixation of the right distal fibula was performed. Clamps and screws were placed in the distal fibula.

The Claimant was seen on March 12, 2013 by a nephrology clinic due to an recent episode of acute kidney injury the prior week, and admitted to the hospital with a creatinine level of 3.1. With gentle IV hydration the kidney function returned to almost normal. The treatment notes indicate that the Claimant has not been following up with his infectious disease specialist and was not taking any HIV medications. The Claimant was referred to an infectious disease specialists the following week. The assessment was acute kidney injury secondary to dehydration resolved.

The Claimant was seen on November 4, 2011 for ear pain. The notes at that time indicate the Claimant drank a half pint of alcohol per day, with no drug use. At the time, the Claimant's ear was treated for otitis media and he was referred to an HIV community clinic, as he was not on any medication at that time and had not had a full CDC count since 2008.

The Claimant was seen in March 2013 for a general checkup for sinus drainage and review of his kidneys. At the time the examining Doctor made a referral for the Claimant to an infectious disease physician as soon as possible as well as a referral to a nephrologist.

On November 11, 2013, the Claimant was seen by his infectious disease doctor and a broken right arm was noted in a sling. October 2011 blood work shows the viral load was undetectable and the CD four count is stable at 92. At the time of the exam, the Claimant was 160 pounds, no alcohol was noted on his breath, the mouth showed no thrush in the lungs were free of wheezes, dullness or crackles. The Doctor notes that the patient's AIDS was under better control but needed more work on reducing his alcohol intake. At that time, he was to see the doctor within four weeks due to his vulnerable status. He was to receive a shot for Hepatitis B.

On October 14, 2013, in a follow-up letter by his infectious disease doctor and treating physician, the doctor indicated that the patient's AIDS is under good control and his viral load is undetectable on three consecutive visits.

The Claimant was seen on August 5, 2013 by his infectious disease Doctor. The Doctor noted that in June the Claimant's viral load was undetectable, and the CD4 count had now increased to 148. The impression was the patient's AIDS was improving, that he is still in a vulnerable situation, but he has a very capable case manager.

The Claimant was seen by his infectious disease's treating Doctor on June 17, 2013. The following was noted in May of 2012. The Claimant's viral load was 162,000 copies and the CD4 count was 131. In March, before starting his medications, his viral load was 33,000 and his CD4 count was down to 68. The notes indicate that the Claimant was a chronically ill patient, but appears alert using crutches due to a right leg cast. The impression and plan was that he needed a complete AIDS reassessment.

Claimant testified to the following symptoms and abilities: standing up too fast causes him be dizzy; the Claimant can stand for 5 to 15 minutes and then must sit down due to ankle pain and dizziness; the Claimant can sit for several hours; can walk 2 to 3 blocks and then becomes fatigued; can bend at the waist; and has leg and hand cramps. The heaviest weight the Claimant could carry was 10 pounds. The Claimant is limited in his housework as he gets dizzy. These dizziness symptoms also keep him from driving.

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 bus boy at the [REDACTED]. The Claimant also performed cleanup and janitorial at a laundry company, as well as packing laundry. The Claimant worked in an industrial setting making pallets and as a nail gun operator.

This Administrative Law Judge finds, based on the medical evidence and objective, physical findings, that Claimant is not capable of the physical 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.

This Administrative Law Judge finds that Claimant has the residual functional capacity to perform work at no more than a sedentary work level. This determination is based upon the evaluation of the Claimant's infectious disease treating doctor, who places the Claimant at sedentary. The treating doctor's evaluation was given deference.

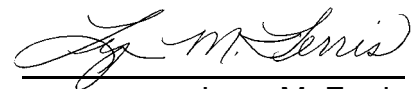
Claimant is an individual of advanced age. 20 CFR 416.963. Claimant has completed high school. 20 CFR 416.964. Claimant's previous work was unskilled and is not transferable. Federal Rule 20 CFR 404, Subpart P, Appendix 2, contains specific profiles for determining disability based on residual functional capacity and vocational profiles. Under Table I, Rule 202.04, Claimant is determined disabled for purposes of the Medical Assistance program.

DECISION AND ORDER

Accordingly, the Department's decision is hereby 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 shall re-register the Claimant's application for MA-P dated April 19, 2013, and retro-application for March 2013, and determine the Claimant's non-financial eligibility, if not having already done so.
2. The Department shall conduct a review of this case in October 2015.



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

Date Signed: October 31, 2014

Date Mailed: October 31, 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

LMF/tm

cc:

