

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

IN THE MATTER OF:



Reg. No.: 14-001450
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 7, 2014
County: Genesee-District 2

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

DECISION AND ORDER OF RECONSIDERATION

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to the Claimant's Authorized Hearing Representative's (AHR) timely Request for Rehearing/Reconsideration of the Hearing Decision generated by the assigned Administrative Law Judge (ALJ) at the conclusion of the hearing conducted on August 7, 2014, and mailed on September 5, 2014, in the above-captioned matter.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 400.919, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program or programs that is the basis for the claimant's benefits application, and **may** be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

This matter having been reviewed, an Order Granting Reconsideration was mailed on September 18, 2014.

ISSUE

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

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Findings of Fact No. 1 through 21 under Registration Number 14-001450 are incorporated by reference.
2. On August 7, 2014, a hearing was held resulting in a Hearing Decision mailed on September 5, 2014, which found Claimant was not disabled.
3. On September 18, 2014, Claimant's authorized representative requested reconsideration/rehearing.

4. The Request for Rehearing/Reconsideration was GRANTED.

CONCLUSIONS OF LAW

In the instant case, Claimant requested rehearing/reconsideration asserting misapplication of policy that would impact the outcome of the original hearing decision.

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 CFR 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 an 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, Claimant is not involved in substantial gainful activity and, therefore, is not ineligible for disability benefits under Step 1.

The severity of Claimant's alleged impairment(s) is considered under Step 2. 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
6. Dealing with changes in a routine work setting.

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 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). 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).

In the present case, Claimant alleges disability due to coronary artery disease, angina, benign hypertension, chronic airway obstruction, dizziness, hyperlipidemia, coronary atherosclerosis of native coronary artery, palpitations, postsurgical percutaneous transluminal coronary angioplasty (PTCA) status, shortness of breath, tobacco use disorder, emphysema, chronic obstructive pulmonary disease, obstructive sleep apnea, back pain, depression, and anxiety.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Claimant has presented medical evidence establishing that he does have physical limitations on his ability to perform basic work activities. The ALJ found Claimant's impairment(s) were no severe; however, the medical evidence has established that Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on Claimant's basic work activities. Further, the impairments have lasted, or are expected to last, continuously for twelve months or longer; therefore, Claimant is not disqualified from receipt of MA-P benefits under Step 2 and the ALJ erred in finding otherwise.

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 evidence confirms treatment/diagnoses of coronary artery disease, angina, benign hypertension, chronic airway obstruction, dizziness, hyperlipidemia, coronary atherosclerosis of native coronary artery, palpitations, postsurgical percutaneous transluminal coronary angioplasty (PTCA) status, shortness of breath, tobacco use disorder, emphysema, chronic obstructive pulmonary disease, obstructive sleep apnea, back pain, depression, and anxiety.

Listing 4.00 defines cardiovascular system impairments. Cardiovascular system impairments affect the proper functioning of the heart or the circulatory system (that is, arteries, veins, capillaries, and the lymphatic drainage). The disorder can be congenital or acquired.

4.00(C). Coronary artery disease, demonstrated by angiography (obtained independent of Social Security disability evaluation) or other appropriate medically acceptable imaging, and in the absence of a timely exercise tolerance test or a timely normal drug-induced stress test, an MC, preferably one experienced in the care of patients with cardiovascular disease, has concluded that performance of exercise tolerance testing would present a significant risk to the individual, with both 1 and 2:

1. Angiographic evidence showing:
 - a. 50 percent or more narrowing of a nonbypassed left main coronary artery; or
 - b. 70 percent or more narrowing of another nonbypassed coronary artery; or
 - c. 50 percent or more narrowing involving a long (greater than 1 cm) segment of a nonbypassed coronary artery; or

- d. 50 percent or more narrowing of at least two nonbypassed coronary arteries; or
- e. 70 percent or more narrowing of a bypass graft vessel; **and**

2. Resulting in very serious limitations in the ability to independently initiate, sustain, or complete activities of daily living.

On [REDACTED], Claimant underwent bilateral coronary angiography. The angiography was in response to Class II to Class III angina symptoms with a history of coronary artery disease and stenting in the proximal portion of the left anterior descending artery and proximal to midportion of the right coronary vessel. The angiography revealed:

- 1. Left main 20%, remains unchanged.
- 2. Left anterior descending artery in-stent restenosis 30% to 50% which remains unchanged.
- 3. Diagonal branch was 90% stenosis which remains unchanged.
- 4. Diffuse disease of the distal portion of the left anterior descending artery.
- 5. Circumflex coronary vessel showed diffuse disease in the ostium at 30%.
- 6. Right coronary vessel has an ostial stent restenosis about 30% to 50% which remains unchanged.
- 7. The distal portion of the right coronary vessel has a 30% stenosis at the distal edge of the ostium.
- 8. Normal left ventricular function with elevated left ventricular end-diastolic pressure of 29mmHg.

Based on the results of the angiography, Claimant has a diagonal branch with 90% stenosis, which meets Listing 4.04(C)(1)(b) of 70 percent or more narrowing of another nonbypassed coronary artery.

Claimant also testified he is limited to sitting for 10-15 minutes, standing 5-10 minutes, walking one block, and lifting 15 pounds. Because Claimant's limitations are less than sedentary, this Administrative Law Judge finds his heart problems result in very serious limitations in his ability to independently initiate, sustain, or complete activities of daily living. As a result, Claimant meets Listing 4.04(C)(2).

In this case, the objective medical evidence confirms coronary artery disease and 70 percent or more narrowing of another nonbypassed coronary artery with very serious limitations in his ability to independently initiate, sustain, or complete activities of daily living. In light of the foregoing, Claimant's impairments meet, or are the medical equivalent, of a Listing within Listing 4.00, specifically, 4.04(C). Accordingly, Claimant is found disabled at Step 3 with no further analysis required.


Accordingly, the ALJ's determination which found Claimant not disabled at Step 4 (ability to perform past work) is VACATED and the Department's determination which found Claimant not disabled is REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the ALJ erred in affirming the Department's determination which found Claimant not disabled.

Accordingly, it is ORDERED:

1. The ALJ's Hearing Decision mailed on November 8, 2013, under Registration Number 2013-45575 which found Claimant not disabled is VACATED.
2. The Department's determination which found Claimant not disabled is **REVERSED**.
3. The Department shall initiate processing of the December 10, 2013, application with requested retroactive months back to September, 2013, to determine if all other non-medical criteria are met and inform Claimant of the determination in accordance with Department policy.
4. The Department shall supplement for any lost benefits (if any) that Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.
5. The Department shall review Claimant's continued eligibility in December, 2015, in accordance with Department policy.



Vicki Armstrong
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **12/11/2014**

Date Mailed: **12/11/2014**

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NOTICE OF APPEAL: The law provides that within 30 days of receipt of this decision, the Claimant may appeal this decision to the circuit court for the county in which he/she lives.

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