

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

IN THE MATTER OF:



Reg. No.: 14-016581-R
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: July 8, 2014
County: Ingham

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 July 8, 2014, and mailed on August 14, 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 December 4, 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 11 under Registration Number 2014-30721 are incorporated by reference.
2. On July 8, 2014, a hearing was held resulting in a Hearing Decision mailed on August 14, 2014, which found Claimant was not disabled.
3. On August 14, 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 under Steps 4 and 5 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).

Steps 1 and 3 are incorporated by reference from pages 6 and 7 of the Hearing Decision Registration No. 2014-30721, dated August 14, 2014. The only issues under review in this Reconsideration are Steps 2, 4 and 5.

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 arthritis, degenerative disc disease, spina bifida, lumbosacral spondylosis without myelopathy, lumbago, obesity, blind in right eye, asthma, high cholesterol, esophageal ulcers, hemorrhoids, gastroesophageal reflux disease, substance abuse, anxiety, depression, chest pain, shoulder pain, shingles, hernia, hypothyroidism, low back pain, knee pain and chronic obstructive pulmonary disease.

The medical evidence has established that Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, Claimant is not disqualified from receipt of MA-P benefits under Step 2 and the ALJ erred in finding otherwise.

The fourth step in analyzing a disability claim requires an assessment of the individual's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). 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). 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). RFC is assessed based on impairment(s) and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

Claimant has a history of less than gainful employment. As such, there is no past work for Claimant to perform, nor are there past work skills to transfer to other work occupations. Accordingly, Step 5 of the sequential analysis is required.

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, Claimant was 63 years old, and was, thus, considered to be closely approaching retirement for MA-P purposes. Claimant has a college education. 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).

In this case, the evidence reveals that Claimant suffers from arthritis, degenerative disc disease, spina bifida, lumbosacral spondylosis without myelopathy, lumbago, obesity, blindness in right eye, asthma, high cholesterol, esophageal ulcers, hemorrhoids, gastroesophageal reflux disease, substance abuse, anxiety, depression, chest pain, shoulder pain, shingles, hernia, hypothyroidism, low back pain, knee pain and chronic obstructive pulmonary disease.

On [REDACTED], Claimant underwent an independent medical evaluation. Claimant's chief complaints were scoliosis, spina bifida, insomnia, left hip pain, blindness in right eye, anxiety, depression, degenerative disc disease, esophageal ulcers, hernias and shingles. Claimant stated he can sit for one to two hours, stand 20 minutes before his back hurts, walk 2 miles and lift 20 pounds. The physician indicated Claimant has meralgia at the left leg. He did have some lumbar spine straightening in the lumbar spine and did have an element of mild arthropathy. He had mild synovial thickening in the right knee. He had mild difficulty performing orthopedic maneuvers but his gait was relatively stable with a mild right limp. He does not need an assistive device at present. At this point, anti-inflammatories and activity as tolerated would be indicated. Claimant also has a history of inguinal and umbilical hernias which appeared to be quiescent. Claimant reported a history of anxiety and depression. The physician opined his mental affect appears relatively stable. He is undergoing treatment and continues to go to AA meetings. Claimant is blind in his right eye, but was able to navigate around the room without difficulty and his vision is stable on the left.

The Department referred Claimant for a psychological evaluation on [REDACTED]. The psychologist indicated the results of the psychological instruments indicate Claimant has an extremely long history of criminal behavior and incarcerations with at

least six felony convictions. He has been out of prison for the last year and two months. He is also on the sexual offenders register because of past criminal behavior. He also reported that he began using alcohol as a young child and was raised in an alcoholic and violent home, and abused alcohol and drugs for many years. He has not abused drugs or alcohol in the year and two months he has been out of prison and reported he is fully committed to his sobriety program with AA. He did not exhibit evidence of significant levels of depression or anxiety during the evaluation. He reported he has multiple medical problems which have resulted in chronic pain and significantly reduced physical capabilities. The psychologist opined that Claimant exhibits unimpaired capabilities to understand, retain, and follow simple instructions and to perform and complete simple tasks. He appears to have unimpaired capabilities to interact appropriately and effectively with co-workers and supervisors, and to adapt to changes in the work setting. The psychologist added that he suspected Claimant's current psychological condition would not result in any impairment to do work-related activities. Diagnosis: Alcohol dependence in full remission; polysubstance abuse in remission; personality disorder with mixed traits; moderate psychosocial stressors associated with severe financial limitations, a history of chronic criminal behavior and incarceration for over thirty years, resulting in physical ailments and chronic pain. Prognosis is guarded.

On [REDACTED], Claimant was sent to [REDACTED] hospital for a medical evaluation. Claimant states he is feeling better. He feels happy. He denies depression, suicidal or psychotic ideation. Claimant was assessed with a history of hypothyroidism, corrected; history of hyperlipidemia, addressed; history of esophageal ulcers. He had a scope in 2005. In the distant past he has a history of hematemesis, history of alcohol abuse, which apparently is quiescent. He has a history of polysubstance abuse including heroin, marijuana, and multiple substances in the past. He states he has been drug free for many years; nicotine addiction, at least a pack a day for the past 40-45 years and he does have a smoker's cough; diffuse musculoskeletal discomfort, resolving right chest wall pain, acute left shoulder pain, chronic low back pain, chronic knee pain, chronic neck pain.

Claimant underwent a mental status evaluation by an independent examiner on [REDACTED]. Claimant alleged disability on the basis of depression and anxiety. Claimant stated he has no history of mental health treatment. He said he had treatment for substance abuse and anxiety, related to readjustment to society after being released from prison the last time. Claimant lives alone and said he gets along with his family well. He has a lot of friends in AA. The psychologist opined that Claimant's abilities to understand, remember, and carry out simple instructions are mildly impacted in areas of information processing, attention, and concentration from psychological/emotional sources. The abilities to respond appropriately to others, including supervisor and co-workers and to adapt to changes in a work setting are moderately to severely impacted from sources of psychopathology/emotional dysfunctions. His ability to perform work related activities, despite alleged impairments, in a reliable, consistent and persistent manner is moderately to severely impacted from psychopathology. Diagnosis: Axis I: Mood disorder with features of chronic depression and disinhibition over anger; generalized anxiety disorder with features of general anxiety and panic attacks; alcohol addiction, alleging 10 months full sustained remission this time; history of poly drug experimentation, alleging none in 10 years; suspect features of posttraumatic stress disorder, sub-clinically; cognitive disorder; Axis II: Defer; Axis III: pain in back with

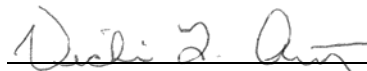
shingles, and knee with some type of injuries, esophageal ulcers, thyroid problem, history of concussions; Axis V: employment problems, financial problems, post prison readjustment issues; Axis V: GAF= [REDACTED] Prognosis is guarded.

Claimant credibly testified that he is able to sit all day, stand for half an hour, walk half a mile and lift 50 pounds. He indicated he has no problems bending, squatting, or manipulating objects. Claimant stated he still smokes, although he has been told by his doctors to quit.

At the time of hearing, Claimant was 59 years old, and was, thus, considered to be of advanced age for MA-P purposes. Claimant has a high school equivalent education. Disability is found if an individual is unable to adjust to other work. *Id.* In light of Claimant's testimony, and the lack of restrictions in Claimant's medical records, it is found that Claimant maintains the residual functional capacity for work activities on a regular and continuing basis which includes the ability to meet the physical and mental demands required to perform at least medium work as defined in 20 CFR 416.967(c). Using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 203.14, it is found that Claimant is not disabled for purposes of the MA-P program at Step 5.

DECISION AND ORDER

In light of the foregoing, the Hearing Decision mailed on August 14, 2014, under Registration Number 2014-30721, that upheld the Department's denial of MA benefits is **AFFIRMED** and Claimant is not disabled for purposes of the MA-P benefit program.



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

Date Signed: **12/10/2014**

Date Mailed: **12/10/2014**

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

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