

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014 15202
Issue No(s): 2009, 4009
Case No.: [REDACTED]
Hearing Date: March 17, 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, a telephone hearing was held on March 17, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Assistance Payments Worker, and [REDACTED], Medical Contact Worker also appeared.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) and/or State Disability Assistance (SDA) 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. The Claimant applied for MA-P and SDA on July 9, 2013.
2. The Medical Review Team denied Claimant's request on November 1, 2013.
3. The Department sent the Claimant a Notice of Case Action on November 12, 2013.
4. The Claimant filed a timely hearing request on November 14, 2013.
5. The State Hearing Review Team issued a decision on February 6, 2014, denying the Claimant's request for MA-P and SDA for lack of severity.

6. An Interim Order was issued on March 17, 2014, requesting the Department obtain and schedule a consultative examination with an internist and submit a completed DHS 49 with limitations shown, if any. The Department was also ordered to obtain hospital admission records from July 1, 2013 at Henry Ford Hospital. After follow-up, the Department did not provide any of the documentation to respond to the Interim Order.
7. The Claimant has alleged physical disabling impairments due to residual effects of gunshot wound in the abdomen causing back pain, and repair and resection of his small intestine, as well as wound treatment to his left arm. The Claimant was admitted for a one-day hospital stay.
8. The Claimant's past relevant work was as a security guard, working in a domestic commercial laundry, and factory work doing packaging, working in shipping and receiving, and as an industrial machine operator. Most of these positions required the Claimant to stand most of the day and lift between 10 and 60 pounds.
9. At the time of the hearing, the Claimant was 45 years old with a [REDACTED] birth date. The Claimant was 5'10" and weighed 196 pounds.
10. The Claimant has not alleged any mental disabling impairments

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.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

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

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

Id.

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 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).

The Claimant has alleged physical disabling impairments due to residual effects of a gunshot wound in the abdomen causing back pain, and repair and resection of his small

intestine, as well as wound treatment to his left arm. The Claimant was admitted for a one-day hospital stay.

A summary of the medical evidence follows.

On July 1, 2013, the Claimant was brought to the emergency room by ambulance with gunshot wounds to the left abdomen and left upper extremity. Patient was stable. As a result of the gunshot wounds, three defects were noted in the ileum within a 10 to 15 cm segment. This segment of the small bowel was resected and stapled primary anastomosis was performed. The remainder of the abdomen was unharmed. Three bullet defects in the left arm were irrigated and dressed. A bullet lodged in the left of the midline in the subcutaneous fat of the back was removed. The patient was taken to recovery in stable condition. Based on an x-ray of the left arm and shoulder taken prior to the irrigation and dressing of the wounds of the left arm, the impression noted no acute fracture or dislocation of the left shoulder, left humerus left elbow, or left forearm. No radiopaque retained foreign body. Soft tissue defect in the medial aspect of the distal left arm and air within the lateral soft tissues of the left elbow likely relate to entry and exit sites. The Claimant was discharged after a one-day stay in stable condition.

The Claimant was seen in the emergency room on August 10, 2012, prior to his gunshot wound injury related to his July 9, 2013 application. At the time he was seen in the hospital, the Claimant presented with altered mental status and had a complaint of being assaulted. At the time, the impression was symptoms were consistent with concussion and obtained CT of the head. Injuries appear to be isolated to the head; the rest of the secondary survey was negative. The Claimant was cleared for discharged and given a C-collar. The Claimant's cervical spine was cleared before discharge.

No other medical records were provided in support of the application. The Department was requested to obtain additional medical records for a July 2013 hospital admission, but none were received by the Department, nor was a consultative exam which was ordered to be scheduled obtained.

Thus, case must be decided based upon the records that have been submitted as of the date of this Decision.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented objective medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. Accordingly, the 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, the Claimant is not disqualified from receipt of MA-P benefits under Step 2. While it appears that the Claimant has not demonstrated ongoing physical impairments by objective medical evidence, given the facts of the injury, further analysis through Step 5 will be conducted.

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 Claimant asserts disabling impairments due to residual effects of a gunshot wound in the abdomen alleged to be causing back pain, and repair and resection of his small intestine, as well as treatment of four gunshot wounds to his left arm. The Claimant was admitted for a one-day hospital stay.

Listing 1.02 Major Dysfunction of a Joint and 1.04 Disorders of the Spine were examined to determine if the medical evidence met the listings. Listing 1.02 requires Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c. The listing requires the disabling impairment exist in both hands or upper peripheral joint extremities, thus the listing was not demonstrated by the medical evidence. Listing 1.04 with regard to disorders of the spine was examined in light of Claimant's complaints of low back pain, however, no evidence to support ongoing treatment for his back pain or evidence of nerve root impingement were provided, and it appears that the removal of the bullet from the left side of the back in the fat layer did not cause back injury. Thus, listing 1.04 is not met.

Ultimately, it is found that the Claimant suffers from some medical conditions; however, the Claimant's impairments do not meet the intent and severity requirement of either Listing 1.02 or 1.04. A careful review of the medical evidence was made and it was found that the listing was not met. Therefore, the Claimant cannot be found disabled, or not disabled, at Step 3. Accordingly, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the Claimant'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.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though 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. *Id.* 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. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity to the demands of past relevant work must be made. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (e.g., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The Claimant's prior work history consists of employment as a security guard, working in a domestic commercial laundry and factory work doing packaging, working in shipping and receiving and as an industrial machine operator. Most of these positions required the Claimant to stand most of the day and lifting between 10 and 60 pounds. Several of these jobs required heavy lifting of 60 pounds and required standing all day. In light of the Claimant's testimony and records, and in consideration of the Occupational Code, the Claimant's prior work is classified as unskilled medium work. It is determined that the Claimant can no longer do such work as a security guard, working in a domestic laundry and factory work doing packaging, working in shipping and receiving and as an industrial machine operator. Most of these positions required the Claimant to stand most of the day and lifting between 10 and 60 pounds. It is determined that Claimant can no longer do such work due to the lifting requirements and standing all day.

The Claimant testified that he is able to walk to the mailbox and no further due to back pain. The Claimant could stand for 10 to 15 minutes. The Claimant testified that he had no problem sitting and could sit all day long. The Claimant testified that he could not perform a squat and had difficulty bending forward at the waist. The Claimant could shower and dress himself and tie his shoes, but could not touch his toes. With pain medications, his pain was level with Motrin. There was nothing wrong with Claimant's hands, arms, legs or feet. The Claimant believed he could carry 10 pounds. There was no medical evidence available to determine on a clinical basis the Claimant's physical capabilities as regards the above functions. The severity of the limitations which the Claimant testified to were not supported by any current medical evidence.

If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920. In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is not able to return to past relevant work; due in large part the lifting requirements and dizziness, as well as inability to use the right hand. Thus, the fifth step in 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). The Claimant is 45 years old and, thus, is considered to be an individual of younger age for MA purposes. The Claimant has a high school 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 the Claimant has a medical impairment due to lower back pain, secondary to a healing gunshot wound. The Claimant's current pain medication is Motrin. The Claimant's only alleged impairments arise from the residual effects of a gunshot wound in the abdomen causing back pain, and repair and resection of his small intestine, as well as wound treatment to his left arm. The Claimant was admitted for a one-day hospital stay.

Based upon the foregoing objective medical evidence there is no evidence that the Claimant would have difficulty performing work while sitting and has the use of his hands and feet. Sedentary work requires lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

This Administrative Law Judge has taken into account and considered the Claimant's complaints of pain however given the lack of medical evidence to support the complaints of back pain and lack of diagnosis regarding same, there is nothing to support the severity of the lower back pain and limitations caused thereby. 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.

After a review of the Claimant's medical records, reports from treating physicians during the July one day hospitalization, and Claimant's own testimony, Claimant has failed to establish limitations which would compromise his ability to perform sedentary work activities on a regular and continuing basis. See Social Security Ruling 87-11C. There is a lack of medical evidence to substantiate any further restrictions, and the Claimant's own testimony supports his ability to sit for extended periods without any problems. Substantial evidence in the whole record supports the position that, even though some residual back pain may persist, Claimant can perform a substantial number of jobs in the national economy.

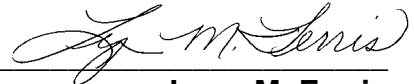
In consideration of the foregoing and in light of the objective limitations, it is found that the Claimant does retain the residual functional capacity for work activities on a regular and continuing basis to meet at the physical and mental demands required to perform sedentary work pursuant to rule 201.21. After review of the entire record, the Findings of Fact and Conclusions of Law, and in consideration of the Claimant's age, education, work experience and residual functional capacity, it is found that the Claimant is not disabled for purposes of the MA-P program at Step 5.

DECISION AND ORDER

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 and SDA benefit programs.

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED.



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

Date Signed: December 17, 2014

Date Mailed: December 18, 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:

2014-15202/LMF

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

LMF/tm

cc:

