

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

**IN THE MATTER OF:**



Reg. No.: 2015-49  
Old Reg No: 2014-28770  
Issue No.: 4009  
Case No.: [REDACTED]  
Hearing Date: June 18, 2014  
County: Wayne County DHS (57)

**ADMINISTRATIVE LAW JUDGE:** Vicki L. 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 June 18, 2014, and mailed on July 9, 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 November 20, 2014.

**ISSUE**

Whether the Department properly determined that Claimant was not disabled for purposes of the State Disability Assistance (SDA) benefit 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. Findings of Fact No. 1 through 10 under Registration Number 2014-28770 are incorporated by reference.
2. On June 18, 2014, a hearing was held resulting in a Hearing Decision mailed on July 9, 2014, finding Claimant was not disabled.

3. On July 30, 2014, Claimant 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).

Step 1 is incorporated by reference from page 4 of the Hearing Decision Registration No. 2014-28770, dated July 9, 2014. The remaining issues are under review in this Reconsideration.

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
6. 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 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 chest pain, shortness of breath, nodules on his lungs and upper body pain with exertion and activity. He also has a history of a right thoracotomy with closure of a ruptured bola and pleural abrasion in 1981.

A surgical record from 1981 was part of the medical records for a right thoracotomy with closure of a ruptured bola, pleural abrasion. At the time, Claimant was 17 years of age.

Claimant was admitted for a one-day hospital stay in May, 2010. At the time of presenting, Claimant complained of severe chest pain. Claimant was discharged with the diagnosis of atypical noncardiac chest pain.

Claimant was seen on [REDACTED], at the pulmonary clinic for evaluation of right-sided chest pain. The chest pain was associated with shortness of breath but wheezing and cough were denied. At the time of the examination of his chest, good air entry was noted bilaterally, no crackles or rhonchi and no murmurs. The assessment was chest pain etiology unclear to further evaluate a CT was ordered.

A CT of the Claimant's thorax was done on [REDACTED], due to right-sided chest pain, shortness of breath with history of pneumothorax status post thoracotomy 30 years ago. The Impression was to plural base nodules were noted in the right lower lobe measuring up to 5 mm. For patients at higher risk, such as smokers, a follow-up chest CT in 6 to 12 months was suggested if no intervention was planned.

A CT of the chest and lungs was performed on [REDACTED]. The findings were biapical pleural-parenchymal, scarring is noted. A 4-5mm pleural based nodular opacity is seen in the right lower lobe on image. A 4mm pleural based nodule is noted on the right lower lobe. Several linear airspace opacities in the right middle and lower lobes likely relate to atelectasis and/or scarring. There is no consolidation or effusion. No pneumothorax is seen, the central airways are present. The Impression was: pleural based nodules noted in the right lower lobe measuring up to 5 mm. Correlate clinically with patient's risk factors. Depending on risk factor, follow-up chest CT is suggested.

A pulmonary function test was also conducted on [REDACTED]. The comments to the examination indicate the reason being chest pain with deep inspiration making FVC efforts difficult but produced two repeatable efforts. Summary, this is a normal spiogram. The total lung capacity is normal. There is mild diffusing impairment. The Interpretation noted the FEV1/FVC is normal. FEV1 is within the range of normal. Forced vital capacity is normal. The total lung capacity is normal. The residual volume is reduced. There is no significant air trapping on lung volume measurements. The hemoglobin corrected diffusing capacity is mildly reduced. The airways conductance is normal. The specific conductance (correcting for lung volume) is normal.

On [REDACTED], a consultative Medical Exam was conducted. At the time of the exam, Claimant was not using an inhaler and had never used an inhaler. The exam noted that Claimant was positive for right tube thoracostomy and surgery for his lung.

The respiratory examination found the chest was symmetrical and equal to expansion. The lung fields were clear to auscultations bilaterally. There were no rales, rhonchi or wheezes noted. No restrictions were noted. No accessory muscle usage noted, no cyanosis noted. There is no cough. The cardiovascular examination noted normal sinus rhythm, S1, S2, no rubs, murmur or gallop. The examiner noted Claimant did not use a cane or walking aid and was able to get on and off the table slowly. The examiner imposed no restrictions. The Impression was COPD. He has not been on any inhalers in the past. He states he did have surgery done in 1981, related to lobes and smoking and he had a collapsed lung, but he does continue to smoke about 4 cigarettes a day. He continues to have chronic shortness of breath. He has not been seen by pulmonologist since 2010.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). Based on the medical evidence, Claimant has presented some limited medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. 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. Accordingly, Step 3 of the sequential analysis is required.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Claimant has alleged physical disabling impairments due to chest pain, nodules on his lungs, shortness of breath, and upper body pain with exertion and activity.

Listing 3.00 (respiratory system) was considered in light of the objective evidence. Respiratory disorders along with any associated impairment(s) must be established by medical evidence. Pulmonary function testing is required to assess the severity of the respiratory impairment once a disease process is established by appropriate clinical and laboratory findings.

On [REDACTED], Claimant underwent a pulmonary function test. Claimant complained of chest pain with deep inspiration making FVC efforts difficult but he produced two repeatable efforts. His FEV1 and FVC were normal. The FEV1 was within the range of normal. The forced vital capacity was normal. The total lung capacity was normal. The residual volume was reduced. There was no significant air trapping on lung volume measurements. The diffusing capacity was mildly reduced. The hemoglobin corrected diffusing capacity was mildly reduced. The airways conductance was normal. The specific conductance (correcting for lung volume) was normal. In summary, this was a normal spiogram. The total lung capacity was normal. There was mild diffusing impairment.

It should be noted that Claimant refused to waive the time frame and submit the results of his scheduled pulmonary function test, scheduled for the month after the hearing in

this case. Therefore, without updated information, the only evidence available is the 2010 pulmonary function test.

Based on the foregoing, it is found that Claimant's impairment(s) do not meet the intent and severity requirement of Listing 3.00; therefore, Claimant cannot be found 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 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's past work history is that of a plumber in construction and as such, Claimant would be unable to perform the duties associated with his past work. Likewise, Claimant's past work skills will not transfer to other occupations. Accordingly, Step 5 of the sequential analysis is required.

In Step 5, an assessment of the individual's residual functional capacity, 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 50 years old, and was, thus, considered to be approaching advanced age for MA-P purposes. 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 Claimant suffers from chest pain, shortness of breath, nodules on his lungs and upper body pain with exertion and activity. He also has a history of a right thoracotomy with closure of a ruptured bola and pleural abrasion in 1981.

Claimant testified to the following limitations, he could stand approximately 40 minutes to one hour and sit approximately 90 minutes, but then he has to take a Tylenol and lay on the couch to get comfortable. Claimant does experience pain sitting for long periods. He could walk about 30 minutes before he really starts getting winded. He could perform a squat, could bend at his waist with no limitation on range of motion. Claimant could shower and dress himself. Claimant could tie his shoes but reported getting dizzy and his chest start hurting. Claimant credibly testified that his hand/arms and legs/feet were fine. Claimant testified he could lift and carry approximately 5 pounds. Claimant also stated he uses an inhaler and has nodules on his lungs. Claimant said he smokes a couple of cigarettes a day and his doctor has told him to stop.

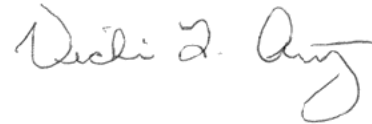
In light of Claimant's testimony, and the lack of restrictions in Claimant's medical records, it is found that Claimant maintains the residual functional capacity for work activities on a regular and continuing basis which includes the ability to meet the physical and mental demands required to perform at least light work as defined in 20 CFR 416.967(b). Based on Claimant's vocational profile (approaching advance age, Claimant is 50, with a high school education and a semi-skilled work history), this Administrative Law Judge finds Claimant's MA benefits are denied using Vocational Rule 202.14 as a guide. Accordingly, Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

The Department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p 1. Because Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that Claimant is unable to work for a period exceeding 90 days, Claimant does not meet the disability criteria for State Disability Assistance benefits either.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that Claimant was not eligible to receive State Disability Assistance.

**DECISION AND ORDER**

In light of the foregoing, the Hearing Decision mailed on July 9, 2014, under Registration Number 2014-28770, that upheld the Department's denial of SDA benefits is **AFFIRMED** and Claimant is not disabled for purposes of the SDA benefit program.



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

Date Signed: December 12, 2014

Date Mailed: December 12, 2014

**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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