

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-001669
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 27, 2014
County: Lapeer

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 August 27, 2014, from Lapeer, Michigan. Claimant, represented by [REDACTED] of [REDACTED] personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED]

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. On October 17, 2013, Claimant filed an application for MA/Retro-MA benefits alleging disability.
2. On February 10, 2014, the Medical Review Team (MRT) denied Claimant's application for MA/Retro-MA indicating a lack of duration. (Depart Ex. A, pp 40-41).
3. On February 12, 2014, the Department sent Claimant notice that his application for MA/Retro-MA had been denied.
4. On May 6, 2014, Claimant filed a request for a hearing to contest the Department's negative action.
5. On June 30, 2014, the State Hearing Review Team (SHRT) found Claimant was not disabled and that he retained the capacity to perform his past work as a truck driver. (Depart Ex. B, pp 1-2).

6. Claimant had applied for Social Security benefits at the time of the hearing.
7. Claimant is a 57 year old man whose birthday is [REDACTED].
8. Claimant is 6'3" tall and weighs 250 lbs.
9. Claimant does not have a drug or alcohol problem. Claimant reported smoking half a package of cigarettes a day.
10. Claimant has a driver's license and is able to drive.
11. Claimant has a high school education.
12. Claimant is working 30 to 35 hours a week at \$ [REDACTED] an hour.
13. Claimant alleges disability on the basis of coronary artery disease with remote coronary artery bypass graft (2002), a ruptured abdominal aortic aneurysm status postsurgical repair, non-sustained ventricular tachycardia with fatigue, hypertension, asthma, and hyperlipidemia.
14. Based on Claimant's current progress, Claimant's representative is requesting MA/Retro-MA for the closed period of August, 2013, through December, 2013.

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.

Federal regulations require that the Department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"Disability" is:

. . . 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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

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).

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. (SGA) 20 CFR 416.920(b). In this case, Claimant is currently working. Claimant testified credibly that he is currently working, but must be accompanied at all times as a result of his health. Therefore, Claimant is not disqualified for MA at this step in the sequential evaluation process.

Second, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment expected to last twelve months or more (or result in death) which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity

requirement as a “*de minimus* hurdle” in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters. Ruling any ambiguities in Claimant’s favor, this Administrative Law Judge (ALJ) finds that Claimant meets both. The analysis continues.

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, meets or medically equals the criteria of an impairment listed in Appendix 1 of Subpart P of 20 CFR, Part 404. (20 CFR 416.920 (d), 416.925, and 416.926).

In the present case, Claimant alleged disability due to coronary artery disease with remote coronary artery bypass graft (2002), a ruptured abdominal aortic aneurysm status postsurgical repair, non-sustained ventricular tachycardia with fatigue, hypertension, asthma, and hyperlipidemia. This Administrative Law Judge consulted all listings. The medical records do not support a finding that Claimant can be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the Claimant has the residual functional capacity (RFC) to perform the requirements of Claimant’s past relevant work. 20 CFR 416.920(a) (4) (iv).

The term past relevant work means work performed (either as Claimant actually performed it or as it is generally performed in the national economy) within the last fifteen years or fifteen years prior to the date that disability must be established. In addition, the work must have lasted long enough for the Claimant to learn to do the job and have been substantially gainfully employed (20 CFR 416.960 (b) and 416.965.) If Claimant has the residual functional capacity to do Claimant’s past relevant work, Claimant is not disabled. 20 CFR 416.960(b)(3). If Claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

Claimant credibly testified that he has a limited tolerance for physical activities and is unable to stand or sit for lengthy periods of time. He stated he is able to walk 100 yards, stand for 15-20 minutes and sit for a few hours. The heaviest weight he is able to lift and carry is 10 pounds. He testified that he has had three heart attacks, beginning in 2002 with his last in August, 2013. He explained that his brother allows him to work driving truck in the yard at the company his brother owns, but he is not allowed to load or unload, and must be accompanied at all times due to his heart condition.

Claimant has a history of employment as a truck driver. Claimant was able to return to part-time employment in January, 2014, as a truck driver at a company owned by his brother, on the condition that he was accompanied at all times and he was restricted from loading or unloading.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the Claimant’s impairment(s) prevents 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 his/her limitations. 20 CFR 416.966.

See *Felton v DSS*, 161 Mich. App 690, 696 (1987). Once Claimant reaches Step 5 in the sequential review process, Claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that Claimant has the residual functional capacity for substantial gainful activity.

The medical information indicates that Claimant suffers from coronary artery disease with remote coronary artery bypass graft (2002), a ruptured abdominal aortic aneurysm status postsurgical repair, non-sustained ventricular tachycardia with fatigue, hypertension, asthma, and hyperlipidemia.

Claimant is 57 years old, with a high school education. Claimant’s medical records are consistent with Claimant’s testimony that he was unable to engage in even a full range of sedentary work from August, 2013, through December, 2013. See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986).

The Department has failed to provide vocational evidence which establishes that Claimant had the residual functional capacity for substantial gainful activity from August, 2013, through December, 2013. Given Claimant’s age, education, and work experience, the Department presented no evidence that there were significant numbers of jobs in the national economy which the Claimant could perform despite Claimant’s limitations during that time. Accordingly, this Administrative Law Judge concludes that Claimant was disabled for purposes of the MA/Retro-MA programs from August, 2013, through December, 2013.

DECISION AND ORDER

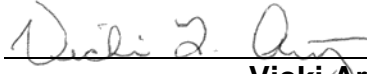
The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant disabled for purposes of the MA-P/Retro-MA benefit program for the closed period of August, 2013, through December, 2013.

Accordingly, it is ORDERED:

1. The Department’s determination is **REVERSED**.
2. The Department shall initiate processing of the October 17, 2013, application to determine if all other non-medical criteria are met and inform Claimant of the determination in accordance with Department policy.

3. Review is not necessary due to the closed period of August, 2013, through December, 2013.

It is SO ORDERED.



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

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

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

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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.

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

cc:

