

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

IN THE MATTER OF:



Reg. No.: 14-013780-RECON
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: November 25, 2014
County: Wayne-District 17

SUPERVISING ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

DECISION AND ORDER OF RECONSIDERATION

This matter is before the undersigned Supervising Administrative Law Judge (SALJ) 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 November 25, 2014, and mailed on February 23, 2015, in the above-captioned matter.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 792.11015 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 April 22, 2015.

ISSUE

Whether the ALJ erred in finding 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 6 under Registration Number 14-013780 are incorporated by reference.
2. On November 25, 2014, a hearing was held resulting in a Hearing Decision mailed on February 23, 2015, which found Claimant was not disabled.

3. On February 26, 2015, Claimant's Authorized Hearing Representative requested reconsideration/rehearing.
4. The Request for Rehearing/Reconsideration was GRANTED.

CONCLUSIONS OF LAW

In the instant case, Claimant's AHR requested a rehearing/reconsideration asserting misapplication of the vocational rules set forth in 20 CFR 404, Subpart P, Appendix 2 that would impact the outcome of the original hearing decision. Claimant's AHR did not advance any other grounds in support of the request for reconsideration.

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 of Health and Human Services administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. Department policies for the MA program are contained in BAM, the Bridges Eligibility Manual (BEM), the Bridges Reference Manual (BRM), and the Bridges Reference Tables (RFT).

Because Claimant's AHR only challenges the ALJs application of the vocational rules, only Step 5 of the sequential analysis is implicated. Thus, the undersigned will only address Step 5 in this matter.

In the present case, Claimant alleges disability due to the following: degenerative disc disease, Barrett's esophagus, osteoarthritis in the back and right knee, depression and HIV positive.

At Step 5 of the analysis, the trier of fact must determine: if the Claimant's impairment(s) prevent the 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 her limitations. 20 CFR 416.966.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in

the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium, and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.

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

Light work: Light work involves lifting no more than 20 pounds at a time with frequent lifting, or carrying, of objects weighing up to 10 pounds. Even though the 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.... 20 CFR 416.967(b).

Medium work: Medium work involves lifting no more than 50 pounds at a time with frequent lifting, or carrying, of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work: Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once the Claimant makes it to the final step of the analysis, the Claimant has already established a prima facie case of disability. *Richardson v Secretary of Health and Human Services*, 732 Fd2 962 (6th Cir, 1984). Moving forward, the burden of proof rests with the state to prove by substantial evidence that the Claimant has the residual function capacity for substantial gainful activity.

At 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). 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).

After careful review of Claimant's medical records and a review of the hearing recording, the undersigned finds that the Department failed to provide vocational evidence which establishes that Claimant has the residual functional capacity for substantial gainful activity and that given Claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which Claimant could perform despite Claimant's limitations.

Claimant's exertional and non-exertional impairments render Claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). Based on Claimant's vocational profile (Claimant is 56 years old, with a 10th (tenth) grade education and an unskilled work history), this Administrative Law Judge finds Claimant's MA/Retro-MA benefits are approved using Vocational Rule 202.02 as a guide. The assigned ALJ erred when she applied Vocational Rule 202.03 because the record does not sufficiently show that Claimant's skills in her past relevant work as a machine operator (DOT 616.380-018) are transferrable.

As a result, the assigned ALJ's determination which found Claimant not disabled at Step 5 (residual functional capacity) is VACATED and the Department's determination which found Claimant is not disabled is REVERSED.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, it is determined that the Administrative Law Judge erred in affirming the Department's determination which found Claimant not disabled.

Accordingly, it is ORDERED:

1. The ALJ's Hearing Decision mailed on February 23, 2015, under registration Number 14-013780 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 November 26, 2013, application to include any applicable requested retroactive months, 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 May, 2016, in accordance with Department policy.

IT IS SO ORDERED.



C. Adam Purnell
Supervising Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/28/2015**

Date Mailed: **5/28/2015**

CAP/sw

NOTICE: The law provides that within 30 days of receipt of the this Decision, the Claimant may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

cc:

