

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

IN THE MATTER OF:



Reg. No.: 14-015180-RECON
Old Reg No.: 14-015180
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: December 11, 2014
County: Macomb-District 20

SUPERVISING ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

DECISION AND ORDER OF RECONSIDERATION

This matter is before the undersigned Supervising 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 December 11, 2014, and mailed on December 18, 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 January 23, 2015.

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 January 24, 2014, Claimant applied for MA/Retro-MA.
2. Findings of Fact No. 2 through 6 under Registration Number 14-015180 are incorporated by reference.

3. On December 11, 2014, a hearing was held resulting in a Hearing Decision mailed on December 18, 2014, which found Claimant not disabled.
4. On January 12, 2015, Claimant's authorized representative requested reconsideration/rehearing.
5. The Request for Rehearing/Reconsideration was GRANTED.

CONCLUSIONS OF LAW

In the instant case, Claimant requested rehearing/reconsideration asserting misapplication of policy and failure to address evidence favorable to Claimant 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).

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).

As outlined above, the first step looks at the individual's current work activity. To be eligible for disability benefits, a person must be unable to engage in **substantial gainful activity (SGA)**. A non-blind person who is earning more than \$1,070 SGA is ordinarily considered to be engaging in SGA. In the record presented, Claimant testified that he was working at odd jobs, earning between \$300 and \$400 a month. Therefore, Claimant is not involved in substantial gainful activity. As a result, he is not disqualified from receiving disability benefits under Step 1 and the ALJ erred in finding otherwise.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual 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 a heart attack, sarcoidosis, chronic obstructive pulmonary disease, hypertension, dyspnea, emphysema, coronary artery disease, and hyperlipidemia.

In support of his claim, Claimant submitted results of a CT-Thorax with contrast from September 18, 2013, revealing lymphadenopathy and lung parenchymal changes compatible with Claimant's known sarcoidosis. This represents stage two sarcoidosis. Claimant also submitted results of a lung biopsy from October 10, 2013, finding bronchial mucosa and pulmonary parenchyma with multiple noncaseating granulomas, consistent with clinical diagnosis of sarcoidosis.

Claimant presented to the emergency department on [REDACTED], with sudden onset of left chest pain radiating down his left arm with numbness while driving, with nausea and sweating. Claimant was admitted to the hospital. On [REDACTED], Claimant underwent a consultation with cardiology. In November, 2013, Claimant presented with acute onset of chest pain where he required balloon angioplasty of his OM2. His cardiac catheterization was reviewed and showed a mid to distal 40-50% stenosis of the LAD. Impression: atypical chest pain with more paresthesias-now resolved, coronary artery disease with PTCA of the OM2 in November, 2013, preserved ejection fraction,

sarcoidosis, and hyperlipidemia. Claimant was discharged and scheduled for outpatient stress testing.

On [REDACTED], a transthoracic echo report showed Claimant had an estimated ejection fraction of 55-60%.

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 reported that he is unable to walk a block due to pain in his hips and shortness of breath. He stated he can stand for 10 – 15 minutes, due to the pain in his back and legs. Claimant testified he can sit for 20-30 minutes before experiencing shoulder pain. He reported chest and back pain radiating down to his legs. He stated he cannot squat. He explained his symptoms from sarcoidosis consist of shortness of breath and coughing with mucous.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). Based on the record medical evidence, Claimant has established that he does have some physical and mental limitations on his ability to perform basic work activities. The medical evidence has shown that Claimant has an impairment, or combination of impairments, 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.

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. The evidence confirms treatment/diagnoses of a heart attack, sarcoidosis, chronic obstructive pulmonary disease, hypertension, dyspnea, emphysema, coronary artery disease, and hyperlipidemia.

Listing 3.00 (respiratory system) and Listing 4.00 (cardiovascular system) were considered in light of the objective evidence. Based on the foregoing, it is found that Claimant's impairment(s) do not meet the intent and severity requirement of a listed impairment; 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.

This step examines the physical and mental demands of the work done by Claimant in the past. 20 CFR 416.920(f). Claimant's employment history shows that he worked as a maintenance man and that he would not be able 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 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 54 years old, a high school graduate, and was considered to be approaching advance age for MA-P purposes. 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).

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 a significant number of jobs in the national economy which Claimant could perform despite his limitations.

In addition, the Department denied Claimant's application for lack of duration. However, the medical records clearly show that Claimant was initially diagnosed in 2013 with sarcoidosis, and his health has continued to deteriorate. This was demonstrated by Claimant's subsequent heart attack and the fact that his sarcoidosis had reached Step 2. Accordingly, the undersigned finds that Claimant is disabled for purposes of the MA-P program.

As a result, the ALJ's determination which found Claimant not disabled at Step 1 (substantial gainful activity), Step 2 (non-severe impairment), Step 3 (listing of impairments), and Step 4 (return to previous employment) are 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 Administrative Law Judge erred in affirming the Department's determination which found Claimant was not disabled.

Accordingly, it is ORDERED that:

1. The ALJ's Hearing Decision mailed on December 18, 2014, under registration Number 14-015180 which found Claimant not disabled is VACATED.
2. The Department's determination which found Claimant not disabled is REVERSED.
3. The Department shall initiate the following: (1) process Claimant's January 24, 2014, application to include any applicable requested retroactive months back to November, 2013; (2) determine if all other non-medical criteria are met; and (3) 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 March, 2016, in accordance with Department policy.

IT IS SO ORDERED.



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

Date Signed: 03/20/2015

Date Mailed: 03/20/2015

NOTICE: 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.

CAP/sw

cc:

