

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

IN THE MATTER OF:

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████████████████████
████████████████████

Reg. No.: 14-016031
Issue No.: 2009
Case No.: ██████████
Hearing Date: January 14, 2015
County: WAYNE-DISTRICT 31
(GRANDMONT)

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 4 way hearing was held on January 14, 2015, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Claimant's Authorized Hearing Representative, ██████████ ██████████ ██████████, also appeared. Participants on behalf of the Department of Human Services (Department) included ██████████, Hearing Facilitator, and ██████████, Hearing Facilitator.

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 on November 18, 2010 and retroactive MA-P for October 1, 2010.
2. The MRT denied the Claimant's request on August 21, 2014.
3. A Notice of Case Action was sent to the Claimant's AHR on August 21, 2014.
4. The Claimant's AHR requested a timely hearing on November 6, 2014.
5. The Claimant alleges physical disabling impairments of HIV AIDS with persistent fatigue due to medications and a fluctuating CD4 count and viral load with rectal

bleeding, diarrhea and eczema. The Claimant also alleges severe low back pain due to a gunshot wound to his back received in a carjacking of his car which occurred in [REDACTED]

6. The Claimant has alleged mental disabling impairment due to PTSD and depression resulting from the gunshot wound, as well as depression resulting from his HIV diagnosis and has been in treatment since [REDACTED].
7. An Interim Order was entered on January 16, 2015 and additional SOLQ's were obtained relative to the Claimant case status with SSA.
8. On [REDACTED] a Judgment in favor of the Claimant in Case No [REDACTED] [REDACTED] Federal District Court, Eastern District was issued by [REDACTED] [REDACTED] which reversed the SSA Appeal Board Commissioners decision denying disability and ordered the Social Security Administration award benefits. The Judgment provides that no objections were filed by the Commissioner and thus further appeal rights are waived. Claimant Exhibit B, pp.2.
9. The case was assigned to a Magistrate for review and a Magistrate Judge's Report and Recommendation was issued [REDACTED] which was adopted by the above order and became a final decision. The Magistrate's Report only considered the evidence presented to the SSA ALJ. The Magistrate's report was based upon a June 10, 2010 application alleging an onset date of [REDACTED]
10. An SOLQ provided by the Department on March 18, 2015 indicated that the SSA had approved the Claimant for RSDI with an onset date of [REDACTED]; this was based on a different application. This Decision will review the period prior to [REDACTED] [REDACTED], from the [REDACTED] application and retro application date of October 2010.
11. Claimant at the time of the hearing was [REDACTED] years old with a birth date of [REDACTED] [REDACTED]. At the time of the application the Claimant was [REDACTED]. Claimant's height is 5'5" and Claimant weighed 159 pounds.
12. Claimant completed the 11th grade.
13. Claimant has employment experience as a dishwasher and cook. At the time of the hearing the Claimant was employed part-time working 22 hours weekly at \$8.25 per hour, which does not meet the SGA limit for 2015 and is only engaged in part-time employment.
14. Claimant's impairments have lasted or are expected to last for 12 months' duration or more.

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. Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. Under SSI, 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 set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

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.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the Claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the Claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in

Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the Claimant's residual functional capacity. 20 CFR 404.1520(e). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, the trier must consider all of the Claimant's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the Claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the Claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the Claimant has the residual functional capacity to do his/her past relevant work, then the Claimant is not disabled. If the Claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Here, Claimant has satisfied requirements as set forth in steps one, two and three of the sequential evaluation. The Claimant is not currently engaging in substantial gainful activity and is employed part-time; thus, is not disqualified at Step 1.

The Claimant alleges physical disabling impairments of severe HIV AIDS with persistent fatigue due to medications and a fluctuating CD4 count and viral load with rectal bleeding, diarrhea and eczema. The Claimant also alleges severe low back pain due to a gunshot wound to his back received in a carjacking of his car which occurred in [REDACTED]

The Claimant has alleged mental disabling impairment due to PTSD resulting from the gunshot wound and depression, as well as depression resulting from his HIV diagnosis and has been in treatment since [REDACTED]

A summary of the medical evidence follows.

For purposes of this Decision the Magistrate Report and Recommendation is adopted herein by reference as it contains the relevant references to the record considered by the Magistrate which reviewed the evidentiary record for the SSA hearing. The undersigned's review adopts the Magistrate's findings and the evidence cited to support that Listing 14.08 is met as it amply demonstrates medical evidence in 2010 was presented and used to find that SSA Listing 14.08 Human Immunodeficiency Virus

(HIV) infection was met. The file presented by the Department at this hearing does not contain medical evidence for [REDACTED]. It is also noted that this case file lingered without an MRT decision from its application date on November 18, 2010 to August 21, 2014, the date the MRT denied disability. There was a lack of evidence presented for the years [REDACTED] and for [REDACTED] in the hearing file. The hearing file medical evidence covers mostly the years [REDACTED] ongoing.

The Claimant was first diagnosed with HIV in [REDACTED] and was confirmed on [REDACTED] at which time Claimant's viral load HIV RNA was 273,000. Exhibit B, pp. 11-12. Thereafter, Claimant began treatment for HIV at the [REDACTED]. At that time Claimant also tested positive for Hepatitis B. On [REDACTED], his treating doctor also diagnosed Claimant with penile lesions and Kaposi's sarcoma; Claimant's blood was tested also on this date and was found that his HIV was non-reactive. At the time Claimant also had trouble with hemorrhoids and an anal fissure, hesitance with voiding, no constipation, and reported several months prior that he had pink blood in his stool. A [REDACTED] follow-up documented Claimant's HIV RNA viral load as 444,000. On [REDACTED] Claimant went to [REDACTED] with rash around his neck and penis and had been on HART HIV therapy for a month. The Claimant was positive for Macular legions on neck and penis. The HIV RNA viral load was 276,000 and molluscum contaosum was present.

On [REDACTED] [REDACTED] Claimant returned to [REDACTED] [REDACTED]. The Claimant was fully compliant with his HIV treatment. Plaintiff's HIV was asymptomatic and stable but he had atopic dermatitis-eczema. In [REDACTED] the Claimant was seen at the Primary Care Clinic and it was determined that the impression was HIV and eczema. Thereafter, on [REDACTED] Claimant was admitted to the hospital with diagnosis of generalized abdominal pain and nausea and diarrhea and was hospitalized for 7 days. On this admission the Claimant was having a bowel movement every five minutes with no relief from Imodium. Claimant's CD4 count was 424 with undetectable viral load. The impression was intractable acute diarrhea secondary to Shigellosis, Leukopenia, chronic secondary to HIV and bandemia secondary to infection.

In [REDACTED] at follow-up, Claimant presented with rectal pain and pressure with diarrhea incidents twice a week with a little bit of blood in the stool.

On [REDACTED] follow up with Infectious Disease Department HIV viral load was 654.

On [REDACTED] the Claimant went again to the [REDACTED] with ongoing back pain and admitted to having frequent bowel movements for the last 6 months - he would have abdominal pain relieved with bowel movement and would notice blood on the toilet paper and in the stool. The impression was diarrhea with blood and a referral to a gastroenterologist was made.

On [REDACTED] the Claimant returned again to the primary care unit with complaints of diarrhea over the last seven to eight months and lower back pain. At that time the records indicate that he had to go to the bathroom more than 5 times a day and sometime there was blood in the stool.

The Claimant most recently was seen in [REDACTED] for infection in the anal area and was treated in the ER.

After a review of the medical evidence it is determined that the Claimant has met the severity requirement and *de minimis* standard of Step 2 as the evidence demonstrates that he has a serious impairment.

The remainder of the Medical evidence for the most part covers the years [REDACTED] on and therefore the undersigned, after reviewing the Magistrate Judge's Report and Recommendation, finds that the Claimant has met Listing 14.08 as explained below.

Listing 14.08 has two components that must be met for a Claimant's impairments to meet the Listing (1) documentation as describe in 14.00F and (2) any one of the enumerated additional components listed as sections 14.08 A-J.

Listing 14.08 was reviewed it requires in relevant part the following requirements be met:

Human immunodeficiency virus (HIV) infection. With documentation as described in 14.00F and one of the following:

A. Bacterial infections:

1. Mycobacterial infection (for example, caused by *M. avium-intracellulare*, *M. kansasii*, or *M. tuberculosis*) at a site other than the lungs, skin, or cervical or hilar lymph nodes, or pulmonary tuberculosis resistant to treatment; or
2. Nocardiosis; or
3. *Salmonella* bacteremia, recurrent non-typhoid; or
4. Multiple or recurrent bacterial infections, including pelvic inflammatory disease, requiring hospitalization or intravenous antibiotic treatment three or more times in a 12-month period.

OR

B. Fungal infections:

1. Aspergillosis; or
2. Candidiasis involving the esophagus, trachea, bronchi, or lungs, or at a site other than the skin, urinary tract, intestinal tract, or oral or vulvovaginal mucous membranes; or
3. Coccidioidomycosis, at a site other than the lungs or lymph nodes; or
4. Cryptococcosis, at a site other than the lungs (for example, cryptococcal meningitis); or
5. Histoplasmosis, at a site other than the lungs or lymph nodes; or
6. Mucormycosis; or

7. *Pneumocystis* pneumonia or extrapulmonary *Pneumocystis* infection.

OR

C. Protozoan or helminthic infections:

1. Cryptosporidiosis, isosporiasis, or microsporidiosis, with diarrhea lasting for 1 month or longer; or
2. Strongyloidiasis, extra-intestinal; or
3. Toxoplasmosis of an organ other than the liver, spleen, or lymph nodes.

OR

D. Viral infections:

1. *Cytomegalovirus* disease (documented as described in 14.00F3b(ii)) at a site other than the liver, spleen or lymph nodes; or
2. Herpes simplex virus causing:
 - a. Mucocutaneous infection (for example, oral, genital, perianal) lasting for 1 month or longer; or
 - b. Infection at a site other than the skin or mucous membranes (for example, bronchitis, pneumonitis, esophagitis, or encephalitis); or
 - c. Disseminated infection; or
3. Herpes zoster:
 - a. Disseminated; or
 - b. With multidermatomal eruptions that are resistant to treatment; or
4. Progressive multifocal leukoencephalopathy.

OR

E. Malignant neoplasms:

F. Conditions of the skin or mucous membranes (other than described in B2, D2, or D3, above), with extensive fungating or ulcerating lesions not responding to treatment (for example, dermatological conditions such as eczema or psoriasis, vulvovaginal or other mucosal *Candida*, condyloma caused by human *Papillomavirus*, genital ulcerative disease).

OR

G. HIV encephalopathy, characterized by cognitive or motor dysfunction that limits function and progresses.

OR

H. HIV wasting syndrome, characterized by involuntary weight loss of 10 percent or more of baseline (computed based on pounds, kilograms, or body mass index (BMI)) or other significant involuntary weight loss as described in 14.00F5, and in the absence of a concurrent illness that could explain the findings. With either:

1. Chronic diarrhea with two or more loose stools daily lasting for 1 month or longer; or
2. Chronic weakness and documented fever greater than 38 °C (100.4 °F) for the majority of 1 month or longer.

OR

I. Diarrhea, lasting for 1 month or longer, resistant to treatment, and requiring intravenous hydration, intravenous alimentation, or tube feeding.

OR

J. One or more of the following infections (other than described in A-I, above). The infection(s) must either be resistant to treatment or require hospitalization or intravenous treatment three or more times in a 12-month period.

1. Sepsis; or
2. Meningitis; or
3. Pneumonia; or
4. Septic arthritis; or
5. Endocarditis; or
6. Sinusitis documented by appropriate medically acceptable imaging.

OR

K. Repeated (as defined in 14.00I3) manifestations of HIV infection, including those listed in 14.08A-J, but without the requisite findings for those listings (for example, carcinoma of the cervix not meeting the criteria in 14.08E, diarrhea not meeting the criteria in 14.08I), or other manifestations (for example, oral hairy leukoplakia, myositis, pancreatitis, hepatitis, peripheral neuropathy, glucose intolerance, muscle weakness, cognitive or other mental limitation) resulting in significant, documented symptoms or signs (for example, severe fatigue, fever, malaise, involuntary weight loss, pain, night sweats, nausea, vomiting, headaches, or insomnia) and one of the following at the marked level:

1. Limitation of activities of daily living.
2. Limitation in maintaining social functioning.
3. Limitation in completing tasks in a timely manner due to deficiencies in concentration, persistence, or pace.

The relevant condition in 14.08 A-K are (F) conditions of the skin with extensive fungating or ulcerating lesions not responding to treatment such as eczema;

The Magistrate also found relevant based upon the evidence before her that 14.08(H) wasting syndrome characterized by weight loss of 10% or more ... or other significant involuntary weight loss as describe in f14.00F, and in the absence of concurrent illness that could explain the weight loss with “chronic diarrhea with two or more loose stools daily lasting for 1 month or longer.” 14.08 I diarrhea lasting for 1 month or longer, resistant to treatment and requiring intravenous hydration, intravenous alimentation or tube feeding.

The Magistrate concluded that “the record clearly establishes that both of the essential elements of the HIV listing of Section 14.08 have been met. The record shows documentation of the disease that meets the listing’s demands for laboratory evidence with Plaintiff’s diagnosis of HIV and his viral load HIV RNA testing. It also shows at least one of the other necessary conditions, Section 14.08 I, with Plaintiff’s hospitalization for diarrhea that had lasted for over a month and was resistant to treatment and required intravenous hydration.” See [REDACTED] admission above and [REDACTED] follow up with continuing diarrhea and rectal pain.

Based upon this medical evidence presented, considered and referenced in detail by the Magistrate's Report and Recommendation, which is incorporated herein, it is determined that the Claimant has met Listing 14.08 as of [REDACTED] and therefore is determined to be disabled at Step 3 with no further analysis required.

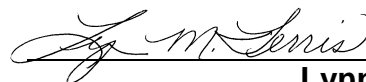
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled as of [REDACTED] for purposes of the MA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department shall process the Claimant's [REDACTED] and retroactive application for [REDACTED] for MA-P to determine Claimant's non-medical eligibility if it has not previously done so.
2. The Department shall provide notice of its determination to the Claimant and Claimant's AHR, [REDACTED].



Lynn M. Ferris

Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/27/2015**

Date Mailed: **3/27/2015**

LMF / cl

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 48909-8139

CC:

[Redacted list of names]