

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014 17498
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: April 16, 2014
County: Wayne County DHS 43

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 telephone hearing was held on April 16, 2014 from Detroit, Michigan. Participants on behalf of Claimant included Claimant and his son, [REDACTED], who was his authorized representative and a witness. [REDACTED] also appeared. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA-P) benefit program?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant was an ongoing MA-P recipient based on a 2013 decision by the Medical Review Team (MRT) finding that Claimant was disabled as of September 2012.
2. In October 2013, the Department reviewed Claimant's ongoing MA-P eligibility.
3. On October 28, 2013, MRT found Claimant no longer disabled.

4. On October 31, 2013, the Department sent Claimant a Notice of Case Action closing his MA-P.
5. On December 6, 2013, the Department received Claimant's timely written request for hearing.
6. On February 28, 2014, the State Hearing Review Team (SHRT) found Claimant not disabled. Exhibit 2
7. Claimant alleged no mental disabling impairments.
8. The Claimant alleges physical disabling impairments due to nephrectomy 2012, with 20 renal stones, urinary tract stage 2, coronary artery disease post quadruple bypass surgery, dysplidemia, cardiomyology, headaches, recent renal calculi, and chronic kidney disease.
9. At the time of hearing, Claimant was 59 years old with a [REDACTED], birth date.
10. At the time of hearing, Claimant was 5'6" in height and weighed approximately 185 pounds.
11. Claimant has an 8th grade education, does not read English and has an employment history of working as a hotel maintenance manager.
12. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

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 MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180.

Department policies are found in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Bridges Reference Tables (RFT).

A disabled individual is eligible for MA-P and SDA. BEM 105 (January 2014), p. 1; BEM 260 (July 2013); BEM 261 (July 2013), p. 1. In order to receive MA benefits based upon disability or blindness, Claimant must be disabled or blind as defined in Title XVI of the Social Security Act. 20 CFR 416.901. Disability is defined as the inability to do any substantial gainful activity (SGA) 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).

Once an individual has been found disabled for purposes of MA benefits, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in accordance with the medical improvement review standard. 20 CFR 416.993(a); 20 CFR 416.994(a). In evaluating whether an individual's disability continues, 20 CFR 416.994 requires the trier of fact to follow a sequential evaluation process to assess current work activities, severity of impairment(s), and the possibility of medical improvement and its relationship to the individual's ability to work. The review may cease and benefits continued if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5). Prior to deciding an individual's disability has ended, the Department will develop, along with Claimant's cooperation, a complete medical history covering at least the 12 months preceding the date the individual signed a request seeking continuing disability benefits. 20 CFR 416.993(b). The Department may order a consultative examination to determine whether or not the disability continues. 20 CFR 416.993(c).

Step One

The first step in the analysis in determining whether an individual's disability has ended requires the trier of fact to consider the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20 CFR 416.994(b)(5)(i). If a Listing is met, an individual's disability is found to continue with no further analysis required.

In the present case, Claimant alleges a disability due to nephrectomy 2012, with 20 renal stones, urinary tract stage 2, coronary artery disease post quadruple bypass surgery, dyslipidemia, cardiomyopathy, headaches, recent renal calculi, and chronic kidney disease.

On September 23, 2012 the Claimant was admitted to the hospital for a 6 day stay due to severe coronary artery disease which was the admission and discharge diagnosis. Hypertension and urinary tract infection was also noted as was pulmonary edema. On September 24, 2012, the Claimant had a quadruple bypass of the Coronary artery. On catheterization, he was found to have multi-vessel coronary artery disease. At the time of admission, the Claimant was also noted to have chronic kidney disease, unstable angina, severe triple vessel coronary disease and probable copd moderate to severe. The Claimant had one kidney removed 6 months prior to the admission. At the time of the bypass, the Claimant had severe three-vessel disease, and diastolic heart failure with Ejection fraction of about 45% and poorly controlled high blood pressure. The LAD showed a 75% stenosis and mid-hazy 95% stenosis. After an angiogram, the impression was severe three-vessel coronary artery disease, with subtotal involvement of the LAD and first diagonal branch. EF estimated at 45%. The Claimant was discharged home stable but required assistance and physical therapy.

A medical Examination Report was completed by the Claimant's family practice physician who has treated the Claimant since 2002.

The Diagnosis was Nephrectomy, with 20 renal stones, urinary tract stage 2, coronary artery disease, dyslipidemia, cardiomyology, headaches, recent renal calculi, and chronic kidney disease. Blood pressure was 159/92. The examiner noted harsh breath sounds, with shortness of breath, and rales. The Claimant was evaluated as stable, with limitations which were expected to last more than 90 days. The Claimant could carry less than 10 pounds frequently and occasionally 10 or 20 pounds but never 25 pounds or more. The Claimant could stand or walk at least 2 hours in an 8-hour workday. The Claimant could sit less than 6 hours in an 8-hour workday. The Claimant could not use his hands for fine manipulations, and could use his foot and legs to operate controls.

In light of the medical evidence presented, Listing 4.02 Chronic Heart Failure (Cardiovascular System) was considered as well as 6.02 Impairment of Renal Function and 3.02 Chronic Obstructive Pulmonary Insufficiency but due to a lack of any test results as regards renal function and pulmonary testing as well as recent heart evaluation, no such determination could be made.

The medical evidence presented in this case was insufficient to meet or equal any of the listings considered. Therefore, a disability is not continuing under Step 1 of the analysis, and the analysis proceeds to Step 2.

Step Two

If the impairment(s) does not meet or equal a Listing under Step 1, then Step 2 requires a determination of whether there has been medical improvement as defined in 20 CFR

416.994(b)(1). 20 CFR 416.994(b)(5)(ii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most favorable medical decision that the individual was disabled or continues to be disabled. 20 CFR 416.994(b)(1)(i). If no medical improvement found, and none of the exceptions listed below in Step 4 applies, then an individual's disability is found to continue.

In this case, based upon the medical condition that was evident at the time of the Claimant's quadruple bypass surgery listed above, it is determined that there is medical improvement with respect to Claimant's severe coronary artery disease. Therefore, a determination of medical improvement is made.

Step Three

When medical improvement is found in Step 2, Step 3 calls for a determination of whether there has been an increase in the individual's residual functional capacity ("RFC") based on the impairment(s) that were present at the time of the most favorable medical determination. 20 CFR 416.994(b)(5)(iii). At the time, just prior to the Claimant's hospitalization, the Claimant was working as a hotel maintenance manager and was performing medium unskilled work. In that capacity the Claimant was required to vacuum, dust sweep and move and pick up TV's and furniture. At the present time the Claimant's treating family physician, who has treated him since 2002, has imposed limitations listed above which include frequently lifting less than 10 pounds, standing at least 2 hours in an 8 hour day. The evaluation also noted that the Claimant could not meet his needs in home including shopping and cleaning, cooking, and receives assistance with these tasks. Based upon this evaluation and the Claimant's credible testimony that he can stand about 10 minutes, sit for 30 minutes and can walk one block, and cannot shower alone due to falling and can carry less than 8 pounds, it is determined that the Claimant's residual functional capacity is that he is capable of only sedentary work and residual functional capacity has decreased since the time of the most favorable medical determination and impairments that existed at that time.

Step Four

Step 4 evaluates whether any listed exception described below applies to the individual. 20 CFR 416.994(b)(5)(iv). If no exception is applicable, disability is found to continue. *Id.*

The first group of exceptions to medical improvement (i.e., when disability can be found to have ended even though medical improvement has not occurred) found in 20 CFR 416.994(b)(3) are as follows:

- (i) Substantial evidence shows that the individual is the beneficiary of advances in medical or vocational therapy or technology (related to the ability to work);
- (ii) Substantial evidence shows that the individual has undergone vocational therapy related to the ability to work;
- (iii) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques the impairment(s) is not as disabling as previously determined at the time of the most recent favorable decision;
- (iv) Substantial evidence demonstrates that any prior disability decision was in error.

The Department did not present any evidence establishing an exception under the first set of exceptions.

The second group of exceptions to medical improvement are found in 20 CFR 416.994(b)(4) and are as follows:

- (i) A prior determination was fraudulently obtained;
- (ii) The individual failed to cooperate;
- (iii) The individual cannot be located;
- (iv) The prescribed treatment that was expected to restore the individual's ability to engage in substantial gainful activity was not followed.

If an exception from the second group listed above is applicable, a determination that the individual's disability has ended is made. 20 CFR 416.994(b)(5)(iv). The second group of exceptions to medical improvement may be considered at any point in the process. *Id.* In this case, no evidence that any of the exceptions had been demonstrated was presented by the Department.

The next step of the analysis to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the Claimant from doing past relevant work. In the present case, Claimant's past employment was performing hotel maintenance and cleaning. The Claimant was on his feet in this job most of the day and he was required to vacuum, dust and move furniture and TVs. The Claimant's work was unskilled and therefore transferability is not an issue. This prior work requires abilities and capabilities that based on the limitations presented cannot be any longer achieved by the Claimant. Therefore, it is determined that the Claimant is no longer capable of past relevant work. Thus, a further analysis is required 20 CFR 416.920(e).

In the final step 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).

In this step, 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, the Claimant was 59 years old and thus is considered a person of advanced age for MA-P purposes. The Claimant has an 8th grade education and cannot read English. The Claimant has also had limitations and restrictions placed on him by his treating doctor on standing and walking less than 2 hours in an 8 hour workday and sitting less than 6 hours in an 8 hour workday as well as lifting carrying restricts of less than 10 pounds frequently. 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 a review of the entire record, including the Claimant's credible testimony and medical evidence presented, particularly the Claimant treating doctor's impression and imposition of limitations, it is determined that the total impact caused by the physical impairment suffered by the Claimant must be considered and that the Claimant's is capable of sedentary work as he cannot meet the required standing or sitting or lifting requirements for light work. In doing so, it is found that the combination of the Claimant's physical impairments in totality have a major impact on his ability to perform even basic work activities. Deference was also given to the opinions of the Claimant's treating doctor.

In light of the foregoing, it is found that the Claimant maintains the residual functional capacity for work activities on a regular and continuing basis to meet the physical and mental demands required to perform sedentary work as defined in 20 CFR 416.967(a). Based upon the foregoing review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.01, it is found that the Claimant is disabled for purposes of the MA-P program.

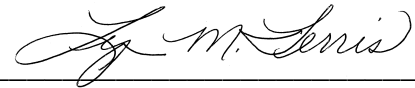
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Claimant disabled for purposes of the MA-P benefit program.

Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING 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. Review and reprocess the October 2013 review application to determine if all other non-medical criteria are met and notify Claimant of its decision in writing;
2. Issue supplements to Claimant for any lost MA-P benefits that he was entitled to receive ongoing if otherwise eligible and qualified in accordance with Department policy; and
3. Review Claimant's continued MA-P eligibility in May 2015 in accordance with Department policy.



Lynn M. Ferris
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: May 7, 2014

Date Mailed: May 7, 2014

NOTICE OF APPEAL: The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was

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made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted 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 Department, AHR or the Claimant 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 the hearing decision is mailed.

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

LMF/tm

cc:

