

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2014-22394  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: April 28, 2014  
County: Wayne County DHS (82)

**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, an in person hearing was held on April 28, 2014 from Inkster, Michigan. Participants on behalf of Claimant included the Claimant. Claimant's mother, [REDACTED], appeared as a witness. [REDACTED], the Claimant's Authorized Hearing Representative, also appeared on behalf of the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Medical Contact Worker.

**ISSUE**

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

**FINDINGS OF FACT**

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

1. On October 23, 2013, Claimant applied for MA-P and retro MA-P (July 2013).
2. On November 13, 2013, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant's AHR the Notice of Case Action dated November 18, 2013 denying the Claimant's MA-P application.

4. On December 21, 2013, Claimant's AHR submitted to the Department a timely hearing request.
5. On April 2, 2014, the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was entered on July 8, 2014 extending the record for SHRT review so new evidence could be reviewed.
7. On July 18, 2014, the SHRT denied disability.
8. Claimant at the time of the hearing was 28 years old with a birth date of [REDACTED]. The Claimant is now 29. Claimant's height is 5'8" and Claimant weighed 120 pounds.
9. Claimant has no relevant work experience.
10. Claimant alleges physical disabling impairments due to HIV and post status CVA.
11. Claimant has alleged mental disabling impairments due to depression and has not received treatment.

### **CONCLUSIONS OF LAW**

MA-P is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department administers MA-P pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (RFT).

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).

The Claimant alleges physical disabling impairments due HIV and post status CVA.

Claimant has alleged mental disabling impairments due to depression.

A summary of the Claimant's medical evidence presented at the hearing and new evidence follows.

The Claimant was evaluated and a Medical Examination Report was completed on April 22, 2014. The Medical Examination Report was completed by an infectious disease doctor who had seen the Claimant at the time for six months. The diagnosis was AIDS, Meningiovascular syphilis and Cerebral Vascular Accident. The examiner noted mental limitations associated with CVA, which included delayed response during the exam and short-term memory loss. The notes indicate the Claimant did suffer a cerebrovascular accident in September 2013. The doctor noted that the Claimant could not meet his needs in the home. At the time of the examination, the examiner noted that the Claimant

was alert and oriented times three, with decreased comprehension at times with delayed response. The clinical impression was that the patient was improving. No limitations were imposed. The Claimant could lift 50 pounds occasionally, and up to 25 pounds frequently. The Claimant could stand at least two hours in an eight-hour workday, and sit for six hours in the six-hour workday. The Claimant had full use of his hands and arms, as well as his feet and legs. The exam findings noted that all other systems were within normal limits. The finding that the claimant could not meet his needs in the home is inconsistent with the doctor's not imposing restrictions.

A consultative Mental Status examination was completed on January 24, 2014. The examiner noted the Claimant to be mildly depressed with blunted affect and mood. The Claimant reported pain in his legs and arms on a level of eight. The Claimant expressed worry and concern about being sick and dying. With regard to recalling by memory items over a three-minute period of time, the Claimant was unable to recall them. At the time of the examination, the Claimant's diagnosis was adjustment disorder, with a GAF score of 65. The exam's medical source statement concluded based on today's examination, the patient is able to acquire and use information, demonstrated the ability to attend to task presented. Individual was able to interact appropriately with the exam and examiner. Patient is able to understand, retain and follow simple instructions and is generally restricted to performing simple, routine, repetitive, concrete, and tangible tasks. The patient would need a public Guardian to manage his own funds.

A consultative Internal Medicine evaluation was completed on January 24, 2014. At the time of the exam, the Claimant indicated he was doing better, that his appetite was improved and he was independent for activities of daily living now, without difficulty walking. Weakness in the right leg has improved with physical therapy. The rashes on his palms and heels have subsided. At the time of the exam, the Claimant's weight was 148 pounds. The range of motion in the cervical, thoracic, and lumbar spine was full. Straight leg raising was negative. The neurological examination noted speech to be normal. The examiner concluded in his medical source statement that the patient can sit, stand and walk for eight hours a day. Patient can bend and lift at least 20 pounds of weight without difficulty eight hours a day. He can climb at least one flight without any problems. The impression was neuro syphilis diagnosed in September 2013, requiring IV antibiotics; the patient is now doing better with antiviral treatment.

The Claimant was hospitalized for a 14-day stay on September 8, 2013. The Claimant reported to the emergency room with right-sided weakness in his arms and legs, causing him to fall down and right-sided facial droop. The Claimant also presented as very thin (120 who pounds). During his stay, the Claimant was diagnosed with a stroke leading to right hemi paresis. A CT of the Claimant's head was negative, but MRI showed multiple foci of acute and subacute cortical infarct in the left-brain territory. CTA of the head and neck showed diminished flow in distal left adrenal carotid artery, with subsequent occlusion. There was mild to moderate diffuse brain atrophy, which is markedly elevated for his age. During his course of treatment, the Claimant improved in his lower extremity and was able to ambulate a little bit. Right upper extremity was still

weak. The Claimant was treated with antibiotic IV for 10 days. The report notes Claimant was positive for HIV, with oral thrush present. Claimant had anemia with a low white blood cell count of 3.6, near leukocytopenia. His CD4 count was found to be eight and his viral load was 600,000. At the time of discharge, the Claimant's range of motion was restricted in the right upper and lower extremities. His lesions on the palm and the bottom of his feet were no longer problematic. Right facial nerve palsy was noted. The Claimant was noted as cooperative. At discharge, his condition was noted as at baseline other than his residual neurological paralysis. While hospitalized, the Claimant underwent a transesophageal echocardiogram with noted ejection fraction of 60% examination was essentially normal.

Here, Claimant has satisfied requirements as set forth in steps one and two, as Claimant is not employed and has demonstrated impairments that have met the Step 2 severity requirements.

In addition, the Claimant's impairments have been examined in light of the listings and after a review of the evidence, the Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Listing 14.08 Human Immunodeficiency virus (HIV) infection was reviewed in light of the Claimant's HIV diagnosis and treatment, however the listing was not met. Specifically 14.08 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) was not met, as the Claimant's skin lesions responded to treatment. Listing 11.04 Central Nervous System Vascular Accident was also reviewed. The Listing requires: **11.04 Central nervous system vascular accident**. With one of the following more than 3 months post-vascular accident:

- A. Sensory or motor aphasia resulting in ineffective speech or communication; or
- B. Significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C).

A review of the objective medical evidence indicates that the required severity of the listing is not met.

Listing 12.04 Affective Disorders was also reviewed for Claimant's depression and it was determined that the required severity required by the Listing, including marked limitations for various categories of functional limitations, are not supported by the objective medical evidence.

Claimant testified to the following symptoms and abilities: the Claimant could not write, as his right arm pops out, and he cannot lift or write with it. The Claimant could not

carry a quart of milk. The Claimant indicated that he had problems remembering things and has sleep disturbance. The Claimant could not walk more than a half block slowly, could not squat, and could not tie his shoes. Claimant was capable of climbing stairs slowly and his legs hurt after standing too long. The Claimant could stand 10 minutes and sit a long time.

In the fourth step of the analysis, the issue 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 has no relevant substantial past employment and thus no analysis can be conducted at Step 4. Accordingly, the Claimant cannot be found disabled, or not disabled, at step 4 and the assessment continues to Step 5.

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 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, the Claimant was 28 years old and is now 29 and, thus, considered to be a younger individual for MA-P purposes. The Claimant has a high school education. The Claimant has not been restricted by his treating infectious disease doctor. That doctor concluded at the time of the examination that the Claimant was alert and oriented times three, at times with decreased comprehension with delayed response. The clinical impression was that the patient was improving. No limitations were imposed. The Claimant could lift 50 pounds occasionally and up to 25 pounds frequently. The Claimant could stand at least two hours in an eight-hour workday, and sit six hours in the six-hour workday. The Claimant had full use of his hands and arms, as well as his feet and legs. The exam findings noted that all other systems were within normal limits.

The Mental Status examiner found Claimant had a GAF score of 65, and concluded that Claimant was able to understand, retain and follow simple instructions, and is restricted generally to performing simple routine, repetitive, concrete and tangible tasks.

Lastly, a consultative exam in January 2014, found Claimant independent of activities of daily living without difficulty walking. Weakness in right leg has improved and Claimant's weight is now 148 pounds. Speech was evaluated as normal. The examiner found Claimant capable of sitting, standing and walking for eight hours a day and capable of lifting at least 20 pounds of weight without difficulty. 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).

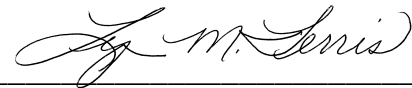
The evaluations and medical opinions of a "treating" physician is "controlling" if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record. 20 CFR§ 404.1527(d)(2), Deference was given by the undersigned to Claimant's infectious disease doctor and the consultative doctors evaluating him. Overall, the Claimant's description of his current physical capabilities and limitations are not supported by the objective medical evidence.

In consideration of the foregoing and in light of the objective limitations, it is found that the Claimant retains the residual functional capacity for work activities on a regular and continuing basis to meet at the physical and mental demands required to perform light work, as defined in 20 CFR 416.967(a). After review of the entire record and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 202.20, it is found that the Claimant is not disabled for purposes of the MA-P program at Step 5.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is NOT medically disabled.

Accordingly, the Department's determination is AFFIRMED.



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

Date Signed: November 17, 2014

Date Mailed: November 17, 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 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:

