

**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.: 2014-31519
Issue No.: 2009
Case No.: ██████████
Hearing Date: July 9, 2014
County: Wayne (82-82)

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 July 9, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant ██████████
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Participants on behalf of the Department of Human Services (Department) included ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████
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At hearing, Claimant submitted additional medical documentation to be considered by the Administrative Law Judge. These records were reviewed and considered in rendering this Hearing Decision.

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 14, 2013, Claimant applied for MA-P and retro MA-P to July 2013.
2. On November 27, 2013, the Medical Review Team denied Claimant's request.
3. On March 13, 2014, Claimant submitted to the Department a request for hearing.

4. The State Hearing Review Team (SHRT) denied Claimant's request.
5. Claimant is 39 years old.
6. Claimant completed education through the 11th grade.
7. Claimant has employment experience (last worked February 2014). He went back to work in January 2014 through February 2014 as a cook working 25 hours a week and earning \$11 an hour. He lost the job due to frequent illness. He had worked as a cook for a year and half. He was off for two weeks in July 2013 but returned to work and worked until the middle of September 2013. He has always worked as a cook. The cooking job required him to walk and stand the entire shift, limited sitting and lifting 45 to 50 pounds.
8. Claimant's limitations have lasted for 12 months or more.
9. Claimant suffers from endocarditis and myocardial infarction.
10. Claimant has some limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.

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.

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. However, Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Therefore, vocational factors will be considered to determine Claimant's residual functional capacity to do relevant work.

In the present case, Claimant has been diagnosed with endocarditis, heart problems and myocardial infarction. Claimant has a number of symptoms and limitations, as cited above, as a result of these conditions. Claimant's medical records include a hospital admission [REDACTED] for chest pain. Claimant was discharged on [REDACTED]. Claimant was diagnosed with acute non-ST elevation myocardial

infarction. Claimant had endocarditis with large vegetation on TEE. Claimant was recommended for a valve surgery which he refused and left against medical advice. ██████████ Claimant was admitted for right calf pain. Claimant was noted to have a history of endocarditis secondary to strep species and was supposed to be on ceftriaxone but he had only taken 3 doses out of 42 doses. He was noted to have severe mitral regurgitation. He noted he had a second opinion on the recommended valve surgery but refused to provide consent for the records and opinion to be obtained. Claimant was noted to be scheduled for mitral valve replacement. ██████████ Claimant was admitted for chest pain. He was noted to be post thrombectomy and post mitral valve repair. His chest pain was noted to be atypical and thought to be likely musculoskeletal. Claimant was admitted ██████████ and left against medical advice ██████████ Claimant was found to be non-compliant with prescribed medical treatment. He was noted to have an ejection fraction of 55%.

Claimant testified to the following symptoms and abilities: chronic chest pains, not able to afford the medications he needs to take, he had a recent stroke last Monday, fatigues real easily, able to walk a block, migraine headaches occurring daily lasting an 1 to 1-1/2 hours, left leg aches all day long, can stand 2-3 hours over a course of a day, no problems with sitting, no lifting over 35 pounds, gets help with all household chores, problems with going up and down stairs, able to manage personal care, needs help with grocery shopping, problems with bending and squatting, not able to drive, poor sleep due to chest pain waking him up every two hours, he doesn't have an appetite and he has leg and arm swelling.

Claimant's testimony about the frequency of his chest pains, fatigue, migraines and other pain symptomology is, at best, questionable. Claimant's credibility is of concern and will be further addressed in step 4 of the analysis. However, according to the medical records Claimant submitted, he left against medical advice on multiple occasions and has demonstrated a disregard to following prescribed treatment or allowing recommended treatment. Claimant refused treatment and failed to have the recommended mitral valve replacement when originally recommended. The refusal accept or follow prescribed treatment is a consideration; while this failure to follow the prescribed treatment does not rise to an automatic finding of not disabled, it is, however, noteworthy.

The fourth 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 testified he went back to work in January 2014 and worked through February 2014 as a cook. He worked 25 hours a week earning \$11 an hour. He testified he lost the job due to frequent illness. He had worked as a cook for 1-1/2 years. He was off for two weeks in July 2013 but returned to work following the two weeks off and worked until the middle of September 2013. He has always worked as a cook. Claimant testified the cook position required him to walk and stand the entire shift, limited sitting and lifting 45 to 50 pounds. Claimant testified he was unable to perform the duties of a cook on an ongoing sustained basis. After

losing his position in February 2014, Claimant filed and received unemployment benefits. At the time of hearing, Claimant was still collecting unemployment benefits.

This Administrative Law Judge finds Claimant's testimony regarding his abilities to perform his past employment less than credible. Claimant, as noted above, has been collecting unemployment benefits. In order to be eligible to collect unemployment benefits, a person must be able, willing, and actively seeking work. Claimant testified he was certifying the above in order to receive unemployment benefits. Claimant asserted he only did so in order to survive. This Administrative Law Judge finds this statement only serves to support Claimant's willingness to mislead a government agency in order to gain assistance. Therefore, his testimony regarding his alleged impairments, the impacts of said alleged impairments and his symptoms are all now considered to be suspect and less than credible. Further, Claimant's testimony regarding the demands of his past position as a cook are also found less than credible. This Administrative Law Judge finds, based on the medical evidence and objective, physical, and psychological findings, that Claimant is capable of the physical or mental activities required to perform any such position. 20 CFR 416.920(e).

Therefore based upon the above, Claimant is found not disabled.

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 decision is hereby UPHELD.



Jonathan W. Owens
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 30, 2014

Date Mailed: July 30, 2014

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides or has its principal place of business in the State, 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 48909-07322

JWO/pf

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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