

**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.: 2014-5256
Issue No(s): 2009
Case No.: ██████████
Hearing Date: March 26, 2014
County: Oakland (02)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 March 26, 2014, from Madison Heights, Michigan. Participants on behalf of Claimant included AHR ██████████ ██████████ ██████████. Participants on behalf of the Department of Human Services (Department) included ██████████

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

1. Claimant applied for MA-P on March 14, 2013.
2. Claimant is █████ years old.
3. Claimant has a limited education.
4. Claimant has a past work history consisting of carpentry.
5. These jobs were performed at the heavy levels.
6. These jobs required standing for at least 8 hours per day, and carrying significant weight.

7. Claimant has a medical history consisting of blood clots (DVT and pulmonary embolism), seizures, vision loss, and traumatic brain injury.
8. Claimant has had several hospitalizations for complications from blood clots.
9. During at least one hospitalization, and one office visit, it was noted that Claimant was not compliant with medications being used to treat the blood clots.
10. Claimant has had one seizure; no abnormal etiology was found on examination, and medical reports noted that drug withdrawal was suspected as the cause.
11. Claimant has lost vision in the right eye after a motor vehicle accident.
12. Claimant alleges traumatic brain injury as an impairment.
13. No medical records or neurological testing of traumatic brain injury was submitted.
14. A medical source gave Claimant light limitations; this source is not a treating source.
15. Claimant can perform most activities of daily living.
16. Claimant is currently taking medications, but does not experience significant side effects; at least one medication is being bought off of the street.
17. Claimant testified to no sitting limitations.
18. Claimant is not currently on any lifting restrictions.
19. On May 23, 2013, the Medical review team denied MA-P, stating that Claimant could perform other work.
20. On June 11, 2013, Claimant was sent a notice of case action.
21. On August 29, 2013, Claimant requested a hearing.
22. On December 5, 2013, the State Hearing Review Team denied MA-P, stating that Claimant could perform other work.
23. On March 26, 2014, an administrative hearing was held.
24. The record was held open to allow for the submission of additional medical records, as well as information with regard to medical testing that was to take place in April, 2014. The record was specifically held open to inform the Administrative Law Judge as to the nature of this testing.
25. No information was ever submitted to the Administrative Law Judge, nor were any additional medical records submitted; on September 12, 2014, Claimant's AHR

submitted a memo stating that no additional medical evidence would be forthcoming.

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 BAM, BEM, and RFT. 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.

Federal regulations require that the Department use the same operative definition of the term “disabled” as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a). 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

This is determined by a five step sequential evaluation process where current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five step sequential evaluation, and when a determination can be made at any step as to the Claimant’s disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920

The first step that must be considered is whether the Claimant is still partaking in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage

index. The monthly SGA amount for statutorily blind individuals for 2013 is \$1,740. For non-blind individuals, the monthly SGA amount for 2013 is \$1040.

In the current case, Claimant has testified that he is not working, and the Department has presented no evidence or allegations that Claimant is engaging in SGA. Therefore, the Administrative Law Judge finds that the Claimant is not engaging in SGA, and thus passes the first step of the sequential evaluation process.

The second step that must be considered is whether or not the Claimant has a severe impairment. A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. This is a *de minimus* standard in the disability determination that the court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, Claimant has presented medical evidence of blood clots, according to the great weight of the evidence by both the Department and Claimant's treating sources. The symptoms described by the Claimant, and supported by independent medical evidence, support the existence of a condition that would result in an impairment that would limit Claimant's ability to perform basic work activities. Claimant has some pain, some shortness of breath, and swelling. Symptoms appear irregularly. The medical records show that the Claimant's impairment can be expected to last 12

months, given the chronic nature of the impairment. Claimant thus passes step two of our evaluation.

It should be noted at this point that Claimant also alleged traumatic brain injury (TBI) and seizures as additional impairments. However, while the medical records in the file allude to possible TBI in the past, no hard evidence of this condition was submitted, despite the Claimant being given ample time to submit such evidence.

No neurological testing has been submitted. There were indications given that Claimant was to undergo such testing on April 24, 2014; however, the exact nature of this testing was unknown at the time of the hearing. The undersigned issued an interim order for Claimant's AHR to investigate and inform the Administrative Law Judge as to the exact nature of the testing, so a determination could be made as to whether neurological testing was needed in this case. However, no such investigation was ever performed, and the undersigned was not notified as to what testing had occurred. Because the Administrative Law Judge was not notified as to the nature of this testing, no subsequent orders requesting a neurological test were given. Thus, no evidence exists of TBI, and as such, this impairment will not be considered in this analysis.

With regard to the seizures, the undersigned does not believe that this constitutes a severe impairment.

All medical records currently in the file indicate that Claimant has had only one seizure; subsequent to this seizure, Claimant was given a neurological workup, but no abnormalities were found. Claimant's treating sources wrote in their records that it was suspected that the seizure was a result of drug and alcohol withdrawal and that it may have been an isolated occurrence. Thus, as there is no indication that this impairment has lasted, or is expected to last for 12 months, the impairment cannot be considered severe, and will not be considered further.

In the third step of the sequential evaluation, we must determine if the Claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This is, generally speaking, an objective standard; either Claimant's impairment is listed in this appendix, or it is not. However, at this step, a ruling against the Claimant does not direct a finding of "not disabled"; if the Claimant's impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that the Claimant's medical records do not contain medical evidence of an impairment that meets or equals a listed impairment.

In making this determination, the undersigned has considered listings in 4.00 (Cardiovascular) and 7.00 (Hemic and Lymphatic). Claimant has not provided medical evidence required to find disability at this step. The medical evidence presented does not support a finding of disability at this step, as there is no particular listing that exists for blood clots. At most, the section on edema seems most pertinent, but nothing in Claimant's condition particularly matches or equals the stated listing. Additionally, even

applying some generic rules for listings, Claimant does not appear to have marked limitations, nor has serious impairment in sustaining independent activity. Therefore, the Claimant cannot be found to be disabled at this step, based upon medical evidence alone. 20 CFR 416.920(d). We must thus proceed to the next steps, and evaluate Claimant's vocational factors.

Evaluation under the disability regulations requires careful consideration of whether the Claimant can do past relevant work (PRW), which is our step four, and if not, whether they can reasonably be expected to make vocational adjustments to other work, which is our step five. When the individual's residual functional capacity (RFC) precludes meeting the physical and mental demands of PRW, consideration of all facts of the case will lead to a finding that:

- 1) the individual has the functional and vocational capacity to for other work, considering the individual's age, education and work experience, and that jobs which the individual could perform exist in significant numbers in the national economy, or
- 2) The extent of work that the Claimant can do, functionally and vocationally, is too narrow to sustain a finding of the ability to engage in SGA. SSR 86-8.

Given that the severity of the impairment must be the basis for a finding of disability, steps four and five of the sequential evaluation process must begin with an assessment of the Claimant's functional limitations and capacities. After the RFC assessment is made, we must determine whether the individual retains the capacity to perform PRW. Following that, an evaluation of the Claimant's age, education and work experience and training will be made to determine if the Claimant retains the capacity to participate in SGA.

RFC is an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis—meaning 8 hours a day, 5 days a week, or an equivalent work schedule. RFC assessments may only consider functional limitations and restrictions that result from a Claimant's medically determinable impairment, including the impact from related symptoms. It is important to note that RFC is not a measure of the least an individual can do despite their limitations, but rather, the most. Furthermore, medical impairments and symptoms, including pain, are not intrinsically exertional or nonexertional; the functional limitations caused by medical impairments and symptoms are placed into the exertional and nonexertional categories. SSR 96-8p, 20 CFR 416.945 (a).

However, our RFC evaluations must necessarily differ between steps four and five. At step four of the evaluation process, RFC must not be expressed initially in terms of the step five exertional categories of "sedentary", "light", "medium", "heavy", and "very heavy" work because the first consideration in step four is whether the Claimant can do PRW as they actually performed it. Such exertional categories are useful to determine

whether a Claimant can perform at their PRW as is normally performed in the national economy, but this is generally not useful for a step four determination because particular occupations may not require all of the exertional and nonexertional demands necessary to do a full range of work at a given exertional level. SSR 96-8p.

Therefore, at this step, it is important to assess the Claimant's RFC on a function-by-function basis, based upon all the relevant evidence of an individual's ability to do work related activities. Only at step 5 can we consider the Claimant's exertional category.

An RFC assessment must be based on all relevant evidence in the case record, such as medical history, laboratory findings, the effects of treatments (including limitations or restrictions imposed by the mechanics of treatment), reports of daily activities, lay evidence, recorded observations, medical treating source statements, effects of symptoms (including pain) that are reasonably attributed to the impairment, and evidence from attempts to work. SSR 96-8p.

RFC assessments must also address both the remaining exertional and nonexertional capacities of the Claimant. Exertional capacity addresses an individual's limitations and restrictions of physical strength, and the Claimant's ability to perform everyday activities such as sitting, standing, walking, lifting, carrying, pushing and pulling; each activity must be considered separately. Nonexertional capacity considers all work-related limitations and restrictions that do not depend on an individual's physical strength, such as the ability to stoop, climb, reach, handle, communicate and understand and remember instructions.

Symptom, such as pain, are neither exertional or nonexertional limitations; however such symptoms can often affect the capacity to perform activities as contemplated above and thus, can cause exertional or nonexertional limitations. SSR 96-8.

In the current case, Claimant has a documented blood clots and vision loss in the right eye. Medical reports, supplied by the Claimant and Department, indicate that Claimant has some difficulty standing for long periods of time (though one source stated that Claimant could stand for 6 hours), and difficulty lifting very heavy weights (though no specific medical weight limitations have been imposed). Claimant may experience irregular pain. Claimant is blind in one eye, and experiences a loss of depth perception. No evidence exists of any mental deficits.

From these reports, the Administrative Law Judge concludes that Claimant has a disabling impairment for the purposes of standing and walking for long periods of time. Claimant has no limitations in the use of their hands for manipulation. Claimant has no postural limitations (e.g. stooping, bending, and crouching). Claimant should avoid activities that require depth perception but has no communicative (hearing, speaking) limitations. Claimant is not medically restricted from lifting, though common sense would dictate that lifting weight above 20 pounds frequently would possible cause discomfort.

Claimant's PRW includes carpentry. These jobs, as typically performed and described by the Claimant, require standing and walking up to 10 hours a day, as well as lifting significant weight. This job requires depth perception. Therefore, given the functional requirements as stated by Claimant (which is consistent with how these jobs are typically performed) for these jobs, and Claimant's functional limitations as described above, the Administrative Law Judge concludes that Claimant does not retain the capacity to perform their past relevant work.

In the fifth step of the sequential consideration of a disability claim, the Administrative Law Judge must determine if the Claimant's impairment(s) prevents 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 his/her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987).

At step five, RFC must be expressed in terms of, or related to, the exertional categories when the adjudicator determines whether there is other work that the individual can do. However, in order for an individual to do a full range of work at a given exertional level, such as sedentary, the individual must be able to perform substantially all of the exertional and nonexertional functions required at that level. SSR 96-8p. The individual has the burden of proving that they are disabled and of raising any issue bearing on that determination or decision. SSR 86-8.

If the remaining physical and mental capacities are consistent with meeting the physical and mental demands of a significant number of jobs in the national economy, and the Claimant has the vocational capabilities (considering age, education and past work experience) to make an adjustment to work different from that performed in the past, it shall be determined that the Claimant is not disabled. However, if the Claimant's physical, mental and vocational capacities do not allow the individual to adjust to work different from that performed in the past, it shall be determined at this step that the Claimant is disabled. SSR 86-8.

For the purpose of determining the exertional requirements of work in the national economy, jobs are classified as "sedentary", "light", "medium", "heavy", and "very heavy". These terms have the same meaning as are used in the *Dictionary of Occupational Titles*. In order to evaluate the Claimant's skills and to help determine the

existence in the national economy of work the Claimant is able to do, occupations are classified as unskilled, semiskilled and skilled. SSR 86-8.

These aspects are tied together through use of the rules established in Appendix 2 to Subpart P of the regulations (*20 CR 404, Appendix 2 to Subpart P, Section 200-204 et. seq*) to make a determination as to disability. They reflect the analysis of the various vocational factors (i.e., age, education, and work experience) in combination with the individual's residual functional capacity (used to determine his or her maximum sustained work capability for sedentary, light, medium, heavy, or very heavy work) in evaluating the individual's ability to engage in substantial gainful activity in other than his or her vocationally relevant past work. Where the findings of fact made with respect to a particular individual's vocational factors and residual functional capacity coincide with all of the criteria of a particular rule, the rule directs a conclusion as to whether the individual is or is not disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(a).

In the application of the rules, the individual's residual functional capacity, age, education, and work experience must first be determined. The correct disability decision (i.e., on the issue of ability to engage in substantial gainful activity) is found by then locating the individual's specific vocational profile. Since the rules are predicated on an individual's having an impairment which manifests itself by limitations in meeting the strength requirements of jobs, they may not be fully applicable where the nature of an individual's impairment does not result in such limitations, e.g., certain mental, sensory, or skin impairments. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(c)-200.00(d).

In the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations. The rules do not direct factual conclusions of disabled or not disabled for individuals with solely nonexertional types of impairments. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(e)(1).

However, where an individual has an impairment or combination of impairments resulting in both strength limitations and nonexertional limitations, the rules are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone; if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience provide a framework for consideration of how much the individual's work capability is further diminished in terms of any types of jobs that would be contraindicated by the nonexertional limitations. Furthermore, when there are combinations of nonexertional and exertional limitations which cannot be wholly determined under the rules, full consideration must be given to all of the relevant facts in the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations, which will provide insight into the adjudicative weight to be accorded each factor.

Claimant is 37 years old, with a skilled work history at the heavy level. Claimant's exertional impairments likely render Claimant at least able to perform work at the light level. Claimant has no medical lifting restrictions, but a medical source stated that Claimant would be limited to lifting up to 25 pounds occasionally. While this source could not be considered a treating source, the undersigned still gives this report significant weight, as it is not inconsistent with the submitted medical evidence. This same report states that Claimant can stand up to 6 hours per day. Claimant testified to no particular restrictions with sitting down for an extended period of time. Claimant can perform most activities of daily living. Claimant did not testify to any difficulty with the use of their hands.

Thus, given that there are no treating source limitations given, and given that the only medical source in the medical records gives Claimant light restrictions, and given that the Claimant may have trouble standing for extremely long periods of time, the Administrative Law Judge finds that Claimant does not have restrictions on sitting, and could stand, per the medical record, for at least 6 hours intermittently over the course of an 8 hour day, which is not inconsistent with a full range of light work.

Therefore, using a combination of Claimant's age, education level (which does not provide for direct entry into skilled work), and skilled work experience, a finding of not disabled is directed. 20 CFR 404, Subpart P, Appendix 2, Rule 201.18.

As stated above, where an individual has an impairment or combination of impairments resulting in both strength limitations and nonexertional limitations, the rules are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone. When strength limitations alone do not permit a finding of disabled, we may consider non-exertional limitations and the effect of these limitations on the Claimant's occupational base. However, while Claimant testified to nonexertional limitations or impairments with relation to their pain and past TBI, Claimant has not stated exactly how these limitations from their impairment would prevent work based activities.

Additionally, with regard to TBI, there is no medical evidence in the packet suggesting limitations, as discussed above.

With regard to psychological limitations, a consultative examination conducted on June 5, 2013 found Claimant fully orientated, with good insight and judgment. While there were indications of anti-social personality disorder, there were no statements that such a diagnosis, if confirmed, would limit or otherwise erode a light work base. An unspecified cognitive disorder was also indicated in this exam, but without neurological testing, it is impossible to render judgment as to how much such a disorder would erode the light work base.

Finally, with regard to pain, there is no evidence that Claimant's pain issues with regard to blood clots is regular or chronic enough to significantly interfere with light work.

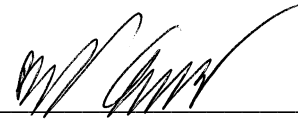
Simply put, the medical record, as submitted, is insufficient to establish that Claimant's non-exertional limitations significantly interfere with a finding of light work, or compromise Claimant's occupational base.

As such, the undersigned holds that Claimant retains the residual functional capacity to perform a full range of light work. As Claimant retains the capacity to perform a full range of light work, a finding of not disabled is directed by rule. The Department was correct in its assessment and must be upheld.

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 not disabled for purposes of the MA and/or SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED.



Robert J. Chavez
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: February 25, 2015

Date Mailed: February 25, 2015

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.

2014-5256/RJC

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

RJC/tm

cc:

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