

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

IN THE MATTER OF:



Reg. No.: 2014-7134
Issue No.: 2009, 4009
Case No.: [REDACTED]
Hearing Date: February 25, 2014
County: Wayne DHS (57)

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 February 25, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist.

ISSUE

Whether the Department properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) and State Disability Assistance benefits 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 July 31, 2013, Claimant applied for MA-P and SDA. At the time of the hearing, the Department was unable to determine whether retro MA-P was also applied for.
2. On September 27, 2013, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant the Notice of Case Action dated October 11, 2013, denying the Claimant's MA-P and SDA application. Exhibit 1

4. On October 11, 2013, the Claimant submitted to the Department a timely hearing request.
5. On December 3, 2013, the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was entered on April 1, 2014 requesting the Department to obtain a consultative examination.
7. The new evidence was provided to the State Hearing Review Team (SHRT) on June 18, 2014, and the SHRT denied disability on July 30, 2014.
8. Claimant at the time of the hearing was 45 years old, with a birth date of [REDACTED]. The Claimant is now [REDACTED]. Claimant's height was 5'9" and weighed 281 pounds (BMI 41).
9. Claimant completed the 9th grade and completed a GED. The Claimant cannot multiply or divide numbers.
10. Claimant has employment experience last worked 2004 as a DJ, and as a general laborer lifting warehouse goods weighing 20 to 30 pounds. The Claimant has no other relevant work experience.
11. Claimant alleges physical disabling impairments due to carpal tunnel syndrome, chronic low back pain with pain radiation to both lower extremities, limited range of motion in right knee with Baker's cyst, multiple abdominal surgeries due to diverticulitis and multiple hernia repairs.
12. Claimant has alleged mental disabling impairments due to depression. The Claimant has received no treatment for his depression.
13. Claimant's impairments have lasted or are expected to last for 12 months duration or more.

CONCLUSIONS OF LAW

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

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family

Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

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

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

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

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

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

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

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

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

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

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

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

Claimant alleges physical disabling impairments due to carpal tunnel syndrome, chronic low back pain with pain radiation to both lower extremities, limited range of motion in right knee with Baker's cyst, multiple abdominal surgeries due to diverticulitis and multiple hernia repairs.

Claimant has alleged mental disabling impairments due to depression. The Claimant has received no treatment for his depression.

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

A consultative medical examination was conducted on April 9, 2014. An extensive history was taken of the Claimant and noted hypertension, a 2011 laparotomy due to a perforated colon secondary to diverticulitis, several abdominal surgical hernia repairs. Claimant also complained of back problems since 2001 with associated numbness in right hip and left leg up to the left fifth toe. Also noted was swelling in the right knee joint with occasional imbalance with Baker's cyst and cartilage deterioration noted. The Claimant's height was 5'10" and weight was 283 pounds (BMI 41); blood pressure was 150/90. Swelling was noted in the right knee joint with tendency for the joint to give out. The Claimant's gait was noted as slow when observed, and use of a cane on the right. Claimant was able to do tandem, tiptoe and heel walking very slowly with some unsteadiness. Claimant was able to bend and stoop 70%; and able to squat 60% with complaints of back pain and knee joint pain. Straight leg raising was 45° on right and 30° on left on recumbent position with complaints of back pain during this movement. The impression was hypertension not at goal with current medication. Obesity BMI of 41; recurring abdominal pain status post multiple surgeries for perforated bowel secondary to diverticulitis with recurring surgical hernia with multiple repairs and revision of the procedures. Chronic persistent low back pain with left radiculopathy probably secondary to degenerative disc disease of the lumbar spine; range of motion of the lumbar spine is decreased. The examiner concluded that based on today's examination, the Claimant has physical and functional limitations due to the above impressions. The Claimant's current ability was that he was able to sit stand bend to 70%, open the door, make a fist, squat and arise from squatting and get on and off the

exam table. The Claimant's straight leg raising was positive, and worse on the left when in supine position.

A Medical Examination Report was completed on August 14, 2013 by the Claimant's family practice doctor, who has seen him since January 2011. The diagnosis was hypertension, hyperlipidemia, abdominal procedures and colostomy closure as well as lumbar pain. Claimant, at that time, was noted as stable and capable of frequently lifting ten pounds, able to sit six hours in an eight hour workday and stand or walk about six hours in an eight hour workday. No limitations with respect to the use of his hands/arms or feet and legs was noted.

A consultative medical evaluation was completed September 5, 2013. A limp on the right side was noted and the physical capabilities noted by the examiner were identical to the most recent exam, except for the flexion of the right knee was significantly better. Straight leg raising while lying down was 0 to 50, and 0 to 90 while sitting. The impression was asthma with use of inhaler, hypertension, and hyperlipidemia with both conditions requiring medications. Depression was noted, as well as medication for depression. Examinee was noted to have carpal syndrome of both wrists, with the left worse than the right. Chronic back pain was also noted related to a previous injury. Multiple operations including multiple hernia repairs and infection due to diverticulosis with reversal of colostomy and ileostomy. No limitations were imposed by the examiner, but complaints of pain were noted with respect to the abilities and limitations. Clinical evidence did support the need for a cane to reduce pain.

A Consultative Mental Status Exam was conducted on September 5, 2014. No history of psychiatric treatment counseling or therapy was reported. The examiner noted that the Claimant indicated he had panic attacks but felt that this condition did not interfere with his ability to work or interact with others. The final diagnosis was adjustment disorder, mild and a GAF score of 60 was determined. The prognosis was fair.

On December 18, 2012, the Claimant's doctor completed a Medical Needs form for [REDACTED] deferral. At that time, the doctor indicated that limitations existed limiting the Claimant to occasionally lifting 10 pounds, and limited in standing and sitting, all boxes were checked. The following assistance in the home was noted--bathing, grooming dressing, transferring, and mobility, taking medications, medical preparation, shopping, laundry and housework.

A medical examination report was completed on December 5, 2012 the Claimant was noted as stable and required assistance with the same or similar activities of daily living noted in previous paragraph of this decision. The diagnosis was hypertension, chronic back pain, anxiety, recurrent diverticulitis, disc bulging and spinal stenosis.

The medical records from the University Pain Clinic were also provided with the hearing packet. The Claimant was seen on February 1, 2013, at which time the Claimant presented with radiating pain of the lumbar spine in both the right leg and left leg in a nonspecific distribution. A MRI of the lumbar spine that was provided by the Claimant

revealed herniated discs in the lumbar spine at L5 S1 centrally and L4 – 5 centrally and L3 – 4 centrally. The Claimant also received steroid injections with fluoroscopy. On March 29, 2013, during a follow-up visit, the Claimant was given his final warning with regard to the use of marijuana and was retested and still tested positive for marijuana.

The Claimant was admitted to the hospital for a five day stay on February 23, 2012 for a colostomy reversal with a diverting loop ileostomy.

The Claimant was seen at the [REDACTED] on February 5, 2013 for a referral regarding right knee pain. At the time of the appointment the pain was described as so excruciating, he must use a cane. The Claimant was treated for knee pain with a pain prescription. A Baker's cyst was noted with no meniscal or ligamentous tear. At the time, based upon an x-ray, the impression was mild bilateral knee joint space narrowing medially. An MRI of the knee was performed on January 10, 2013, and the impression was large joint effusion, large Baker's cyst. No meniscal or ligamentous tear is evident. The Claimant was prescribed a course of physical therapy.

An MRI of the lumbar spine was performed November 30, 2012. The final impression was central disc bulging at L3 – L4 and L4 – 5, and L5 - S1 disc spaces. Mild central spinal canal stenosis at L4 – L5 disc space. At L5 - S1, there was moderate diffuse central disc bulging which is contacting the above exiting nerve root, but did not significantly displace it. At L4 - L5 disc space, diffuse disc bulging with ligament hypotrophy causing mild central spinal canal stenosis. At L3 – L4 disc space, minimal disc bulging without significant spinal stenosis or herniated disc polyposis.

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

In the present case, Claimant has been diagnosed by his treating physician with hypertension, hyperlipidemia, multiple abdominal procedures and colostomy closure, as well as chronic lumbar pain due to spinal stenosis and disc bulging. This doctor evaluated the Claimant as lifting 10 pounds frequently and noted no other restrictions. The Claimant was evaluated as stable, but required assistance with cooking, laundry and grocery shopping.

A consultative examiner in 2014 concluded that Claimant had functional limitations due to chronic persistent low back pain, obesity (BMI 41) with positive straight leg raising.

Claimant credibly testified to the following symptoms and abilities: the Claimant could not walk more than a half block and this would take 15 minutes; he could stand for 5 to 10 minutes, and could sit for 25-30. The Claimant could lift no more than 8 pounds. The Claimant testified he could not squat due to lack of strength and must wash rather than bathe or shower due to pain. Due to hernia, he had difficulty bending forward and could not bend to the right side due to back pain. The Claimant has difficulty climbing stairs due to foot pain with his left foot numbness and right foot tingling, severe knee pain and

back pain. In addition, his carpal tunnel syndrome limits his ability to carry objects. The Claimant cannot use public transportation and cannot do laundry as he cannot carry the load. He must use a scooter with a basket when grocery shopping.

In addition, the Claimant's impairments have been examined in light of the listings and after a review of the objective medical evidence and the Claimant's credible testimony about his physical limitations it is determined that the Claimant's impairments meet a combination of listing 1.02 Major dysfunction of a joint due to any cause; and 1.04 Disorders of the Spine, both set out below as set forth in Appendix 1, 20 CFR 416.926. The Claimant's ongoing difficulty with ambulating, use of a cane noted as necessary, severe morbid obesity, chronic severe ongoing back pain, and multiple abdominal surgeries and hernias in combination were considered.

1.02 Major dysfunction of a joint(s) (due to any cause): Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;

1.02 2, (b) Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities.

The Claimant's persistent and ongoing back and knee pain, limited range of motion in both the knee and back and clinically required use of a cane to ambulate, meet the intent of the definition of inability to ambulate effectively. The Claimant cannot walk more than a half block, cannot shower, has to use a cane, has limitations on bending, and limited ability to stand and sit, and walks with an unsteady gait despite use of the cane. It therefore is determined that he meets the inability to ambulate requirement of 1.02. In this case, the Claimant's knee joint with a large Baker's cyst, when coupled with obesity and medically warranted use of a cane due to unsteady gait and due to knee pain in order to ambulate meet the medical equivalent of this listing. To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. They must have the ability to travel without companion assistance to and from a place of employment or school. Therefore, examples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities,

such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail.

Additionally, it is determined that the Claimant meets the medical equivalent of Listing 1.04, set out below based upon the clinical testing evidence including the MRI, the medical evaluations and chronic, persistent ongoing back pain.

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

or;

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

As the Claimant's conditions have been deemed as meeting a combination and medical equivalent of Listings 1.02 and 1.04, the Claimant is deemed disabled at Step 3 with no further analysis required.

DECISION AND ORDER

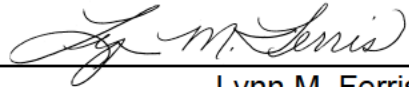
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled, as of September 2010.

Accordingly, the Department's determination is REVERSED.

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

1. The Department is ORDERED to initiate a review of the application dated July 31, 2013 and any applicable retro period (May 2012), if not done previously, to determine Claimant's non-medical eligibility.

2. A review of this case shall be set for August, 2015.



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

Date Signed: August 27, 2014

Date Mailed: August 27, 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:

