

**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.: 14-014647
Issue No.: 2009
Case No.: ██████████
Hearing Date: November 24, 2014
County: Macomb-District 36

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 November 24, 2014, from Sterling Heights, Michigan. Participants on behalf of Claimant included Claimant and ██████████, hearing representative with ██████████; Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (Department) included ██████████ ██████████, Hearing Facilitator.

ISSUE

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

FINDINGS OF FACT

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

1. On March 11, 2014, Claimant submitted an application for public assistance seeking MA-P benefits retroactive to February 2014.
2. On May 20, 2014, the Medical Review Team (MRT) found Claimant not disabled.
3. On May 23, 2014, the Department sent Claimant a Notice of Case Action denying the application based on MRT's finding of no disability.
4. On August 6, 2014, the Department sent the AHR written notice of its denial of Claimant's MA-P application.
5. On October 27, 2014, the AHR submitted a timely written request for hearing.

- (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404;
- (4) whether the individual has the residual functional capacity to perform past relevant work; and
- (5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work.

20 CFR 416.920(a)(1) and (4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

As outlined above, the first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered as not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Claimant testified he receives up to \$800 monthly by renting space in his home to boarders, but there was no evidence that he engaged in SGA activity during the period for which assistance might be available. Therefore, Claimant is not ineligible under Step 1 and the analysis continues to Step 2.

Step Two

Under Step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for MA-P means that the impairment is expected to result in

death or has lasted, or is expected to last, for a continuous period of at least 12 months. 20 CFR 416.922.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). An impairment, or combination of impairments, is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a); see also *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. A disability claim obviously lacking in medical merit may be dismissed. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). However, under the *de minimus* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs* at 862.

In the present case, Claimant alleges physical disability due to heart condition, with chest pain, shortness of breath, history of triple bypass surgery, and numbness in his extremities; pancreatitis; and dizziness. Although not referenced in the documents submitted to the Department, during the hearing, Claimant also indicated that he suffered from short-term memory loss and his medical file included part of a May 2, 2014 request for IQ testing and an adult mental status examination report ordered by the Social Security Administration (SSA) in response to Claimant's concerns that he had changes in his personality and memory since a closed head injury suffered in connection with a 1990 motor vehicle accident. During the hearing, the AHR acknowledged that the medical records and testimony did not support a disability based

on Claimant's mental condition and agreed that a mental status consultation was not warranted. Accordingly, the review of Claimant's impairments excludes the partial report of IQ testing and adult mental status examination. Claimant's remaining medical record is reviewed and summarized below.

On August 16, 2013, Claimant was admitted following complaints of increasing chest and abdominal/back pain, with episodes of nausea and vomiting. The discharge record showed significant cardiac history, including coronary artery bypass grafting (CABG) and significant alcohol consumption. His past medical history included subscapular pain, non-ST elevated myocardial infarction, coronary disease, elevated cholesterol, type 2 diabetes, obesity, status post-coronary artery bypass graft x3, gastroesophageal reflux disease, and pancreatitis, with secondary nausea and vomiting. Claimant was found to have suffered a non-STEMI (non-ST-elevation myocardial infarction) and pancreatitis, with the pancreatitis supporting the reported back and abdominal pain. The pancreatitis was deemed likely secondary to alcohol use. An EKG showed no ST segment abnormality; a chest x-ray revealed no coronary heart failure. Aortic dissection study showed no dissection, and pancreatitis was without signs of gallstones. Claimant's hospital records showed that his hypertension was benign and his hyperlipidemia and diabetes mellitus, type 2 was untreated. During his hospital stay, Claimant's pancreatitis was resolved. With respect to the non-STEMI, Claimant's medications were adjusted and he was advised to follow-up as an outpatient and to avoid alcohol. Claimant was doing very well at discharge on August 18, 2013. (Exhibit 5, pp. 45-93.)

In an April 8, 2014 consultative physical exam ordered by SSA, the consulting doctor concluded that (1) Claimant's blood pressure was controlled; (2) he had no symptoms of angina or signs of congestive heart failure, no neck vein distension, heart murmur, gallop, pulmonary rales, visceromegaly, or leg edema; (3) he had a negative Homan's sign; (4) he was ambulatory with a stable gait; (5) he did not use a walking device; and (6) he could walk on his toes and heels. The doctor found no limitations on Claimant's range of motion for his spine or any joint and no limitations on any physical activity. He had normal reflexes in all extremities. (Exhibit 5, pp. 35-41.)

It is noted that, although the AHR indicated during the hearing that Claimant was hospitalized in February 2012 for chest pain, no records of that hospitalization were included in the medical file and the AHR did not present those documents or request that the record be extended in order to obtain those records.

However, in consideration of the *de minimus* standard necessary to establish a severe impairment under Step 2, the medical evidence presented is sufficient to establish that Claimant suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 12 months. Therefore, Claimant has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination as to whether the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on the objective medical evidence presented, Listings 4.00 (cardiovascular system), 9.00 (endocrine disorders) and any listings referenced therein, and 5.00 (digestive system) were reviewed. However, Claimant's medical record does not support a finding that Claimant's impairments meet, or are medically equal to, the severity necessary to satisfy any of the listing.

Because Claimant's impairments are insufficient to meet, or to equal, the severity of a listing, Claimant is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Step 4, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. Impairments, and any related symptoms, may cause physical and mental limitations that affect what a person can do in a work setting. 20 CFR 416.945(a)(1). RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s) and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4). The total limiting effects of all impairments, including those that are not severe, are considered. 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If the limitations and restrictions imposed by the individual's impairment(s) and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). To determine the exertional requirements, or physical demands, of work in the national

economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a).

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.

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. To be considered capable of performing a full or wide range of light work, [an individual] must have the ability to do substantially all of these activities. If someone can do light work, ... he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

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, ... he or she can also do sedentary and light work.

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, ... he or she can also do medium, light, and sedentary work.

Very heavy work.

Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, ... he or she can also do heavy, medium, light, and sedentary work.

20 CFR 416.967.

In this case, while Claimant testified that he had some short-term memory and anger issues arising from his 1990 closed head injury, the AHR agreed that Claimant's mental condition did not support a finding that he had a mental impairment that would limit his ability to meet non-exertional demands of jobs. With respect to the physical limitations imposed by his condition, Claimant testified that he suffered from shortness of breath, dizziness, and cramps in his extremities; that he had to keep moving in order to keep his extremities from cramping but had to be careful not to move too quickly or he would suffer from dizziness; that he could mow his lawn; which would require 38 minutes; that he could sit but needed to move his legs or they would cramp and fall asleep; that he could stand as long as he could rock back and forth; that he could bend and squat, as long as he adjusted his movements to avoid getting dizzy; that he could take stairs; that he could probably lift 20 pounds based on the fact that he could easily carry two full grocery bags; and that he could grip and grasp but not as effectively as he once could. He also testified that he lived with other people who rented rooms in his home, did his own cooking, cleaning, laundry, shopping and driving and took care of his personal hygiene and dressing without assistance.

The April 8, 2014 consultative physical exam ordered by SSA concluded that (1) Claimant's blood pressure was controlled; (2) he had no symptoms of angina or signs of congestive heart failure, no neck vein distension, heart murmur, gallop, pulmonary rales, visceromegaly, or leg edema; (3) he had a negative Homan's sign; (4) he was ambulatory with a stable gait; (5) he did not use a walking device; and (6) he could walk on his toes and heels. The doctor found no limitations on Claimant's range of motion for his spine or any joint and no limitations on any physical activity. He had normal reflexes in all extremities. (Exhibit 5, pp. 35-41.)

After review of the entire record to include Claimant's testimony, it is found, based on Claimant's physical condition, that Claimant maintains the capacity to perform, at a minimum, light work as defined by 20 CFR 416.967(b). Claimant's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

The fourth step in analyzing a disability claim requires an assessment of Claimant's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

As determined in the RFC analysis above, Claimant is limited to light work activities. Claimant's work history in the 15 years prior to the application consists of work as a caregiver (unskilled, medium), and construction work (semi-skilled, heavy). In light of

the entire record and Claimant's RFC, it is found that Claimant is unable to perform past relevant work. Accordingly, Claimant cannot be found disabled, or not disabled, at Step 4 and the assessment continues to Step 5.

Step 5

In Step 5, an assessment of Claimant's RFC 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 this point in the analysis, the burden shifts from Claimant to the Department to present proof that Claimant has the RFC to obtain and maintain SGA. 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). If the individual can adjust to other work, then there is no disability. Disability is found if an individual is unable to adjust to other work. *Id.*

In this case, Claimant maintains the RFC for work activities on a regular and continuing basis to meet the physical and mental demands required to perform, at a minimum, light work as defined in 20 CFR 416.967(b). At the time of hearing, Claimant was ■ years old and, thus, considered to be a closely approaching advanced age individual for MA-P purposes. Claimant is a high school graduate with some college. Because Claimant's semi-skilled labor involved medium to heavy work, his skills are not transferable. After review of the entire record and in consideration of Claimant's age, education, testimony, work experience, RFC, and using the Medical-Vocational Guidelines (20 CFR 404, Subpart P, Appendix II) as a guide, specifically Rule 202.14, Claimant is found **not** disabled at Step 5.

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds Claimant **not** disabled for purposes of the MA-P benefit program.

DECISION AND ORDER

Accordingly, It is ORDERED that the Department's determination is AFFIRMED.

E-Sign

Alice Elkin

Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **12/17/2014**

Date Mailed: **12/17/2014**

ACE / tlf

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, 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 48909-8139

CC: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]