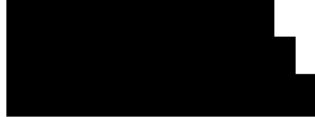


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 14-014828-RECON
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: December 16, 2014
County: Wayne-District 35

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

DECISION AND ORDER OF RECONSIDERATION

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to the Claimant's Authorized Hearing Representative's (AHR) timely Request for Rehearing/Reconsideration of the Hearing Decision generated by the assigned Administrative Law Judge (ALJ) at the conclusion of the hearing conducted on December 16, 2014, and mailed on December 18, 2014, in the above-captioned matter.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 400.919, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program or programs that is the basis for the claimant's benefits application, and **may** be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

This matter having been reviewed, an Order Granting Reconsideration was mailed on January 16, 2015.

ISSUE

Whether the ALJ properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) benefit programs?

FINDINGS OF FACT

1. Findings of Fact No. 1 through 5 under Registration Number 14-014828 are incorporated by reference.
2. On December 16, 2014, a hearing was held resulting in a Hearing Decision mailed on December 18, 2014, which found Claimant was not disabled.
3. On January 12, 2015, Claimant's authorized representative requested reconsideration/rehearing.
4. The Request for Rehearing/Reconsideration was GRANTED.

CONCLUSIONS OF LAW

In the instant case, Claimant requested rehearing/reconsideration asserting misapplication of policy that would impact the outcome of the original hearing decision.

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). The person claiming a physical or mental disability has the burden to establish it 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 ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. 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, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant 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).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(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). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to

perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). 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). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

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).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Claimant last worked in 2010, and is not involved in substantial gainful activity. Therefore, he is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). 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 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples 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. *Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still 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). An impairment qualifies as non-

severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Claimant alleges disability due to chronic obstructive pulmonary disease, recurrent right sided pneumothorax, acute dyspnea, respiratory failure, bronchitis, pneumonia, gastroesophageal reflux disease, two pulmonary nodules, depression and anxiety.

On [REDACTED], Claimant presented to the emergency department for shortness of breath that began during a panic attack. Claimant has a history of COPD with an emphysema component. During his hospital course, Claimant was treated with antibiotics for a possible infectious component as well as steroids, nebulizer treatments, oxygen and improved greatly. A respiratory culture showed mold growth likely secondary to colonization. A CT thorax was completed and showed a 4 mm pleural-based right lower lobe nodule in addition to progression of chronic lung disease with significant COPD changes, emphysema and early fibrosis. Claimant was discharged on [REDACTED], with a diagnosis of acute exacerbation of chronic obstructive pulmonary disease, dyspnea secondary to acute exacerbation of COPD with a possible anxiety component, low back pain, medical noncompliance and a pulmonary nodule of undetermined significance.

Claimant presented to the emergency department on [REDACTED], with difficulty in breathing and a panic attack. Claimant has a history of multiple exacerbations with recurring emergency department visits. He is noncompliant with his medications because he cannot afford medications. He is currently unemployed and unable to work due to his shortness of breath. His shortness of breath can be described as that of exertional shortness of breath. Temperature changes can also elicit difficulty in breathing. Claimant was discharged on [REDACTED], with a diagnosis of chronic obstructive pulmonary disease.

On [REDACTED], Claimant presented to the emergency department complaining of difficulty breathing. Claimant had a known history of COPD which was poorly controlled secondary to medical noncompliance, due to his homelessness and lack of insurance or employment. He also has a history of a known pulmonary nodule which has been seen on imaging studies in the hospital in the past. Claimant was admitted. A CT was performed and the previously known pulmonary nodule was unchanged, however there was a new right lower lobe nodule. He was discharged on [REDACTED] with a diagnoses of: acute-on-chronic respiratory failure secondary to acute exacerbation of chronic obstructive pulmonary disease and viral tracheobronchitis, chronic obstructive pulmonary disease with acute exacerbation, tracheobronchitis likely viral, new right lower lobe pulmonary nodule on CT and old, unchanged pulmonary nodule, ongoing tobacco abuse and medical noncompliance. He was discharged with 30 days of free medication.

On [REDACTED], Claimant presented to the emergency department after four days of shortness of breath with cough and wheezing, using Albuterol at home with no relief. Claimant was admitted to the hospital and started on Solu-Medrol, Rocephin and Zithromax. Claimant was seen by a social worker to help him get his medications as an

outpatient. Claimant was given a 30 day supply of medication and discharged on [REDACTED], with a diagnosis of acute on chronic respiratory failure secondary to acute exacerbation of COPD, tobacco abuse and medical non-compliance.

Claimant was transported to the emergency department by ambulance on [REDACTED] complaining of difficulty breathing and subsequently admitted. During his stay Claimant complained of exertional dyspnea on walking to the restroom. Claimant was discharged on [REDACTED] with a diagnosis of acute exacerbation of chronic obstructive pulmonary disease.

On [REDACTED], Claimant presented to the emergency department with difficulty breathing. Claimant admitted noncompliance with prescribed treatment which likely precipitated the acute episode. He was admitted to the hospital and treated with steroids, antibiotics and breathing treatments. He was discharged on [REDACTED] with a discharge diagnosis of acute exacerbation of chronic obstructive pulmonary disease and tobacco abuse.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). Based on the medical evidence, Claimant has presented evidence establishing that he does have some physical and mental limitations on his ability to perform basic work activities. The medical evidence has established that Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, Claimant is not disqualified from receipt of MA-P benefits under Step 2 and the ALJ erred in finding otherwise.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms treatment/diagnoses of chronic obstructive pulmonary disease, recurrent right sided pneumothorax, acute dyspnea, respiratory failure, bronchitis, pneumonia, gastroesophageal reflux disease, two pulmonary nodules, depression and anxiety.

Listing 3.00 (respiratory system) and Listing 12.00 (mental disorders) were considered in light of the objective evidence. Based on the foregoing, it is found that Claimant's impairment(s) do not meet the intent and severity requirement of a listed impairment; therefore, Claimant cannot be found disabled at Step 3. Accordingly, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the individual's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). 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). RFC is assessed based on impairment(s) and any related symptoms, such as pain,

which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

This step examines the physical and mental demands of the work done by Claimant in the past. 20 CFR 416.920(f). Claimant's past work history is that of chopping firewood and installing floors and as such, Claimant would be unable to perform the duties associated with his past work. Likewise, Claimant's past work skills will not transfer to other occupations. Accordingly, Step 5 of the sequential analysis is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). Disability is found if an individual is unable to adjust to other work. *Id.*

At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

The Department failed to provide vocational evidence which establishes that Claimant has the residual functional capacity for substantial gainful activity and that given Claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which Claimant could perform despite Claimant's limitations.

After careful review of Claimant's medical records and a review of the hearing recording, this Administrative Law Judge finds that Claimant's exertional and non-exertional impairments render Claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P, Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). Based on Claimant's vocational profile (Claimant is 54, with a ninth grade education and an unskilled work history), this Administrative Law Judge finds Claimant's MA benefits are approved using Vocational Rule 201.09 as a guide.


As a result, the ALJ's determination which found Claimant not disabled at Step 2 (non-severe impairment), Step 3 (listing of impairments), and Step 4 (substantial gainful activity) are VACATED and the Department's determination which found Claimant is not disabled is REVERSED.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, it is determined that Administrative Law Judge erred in affirming the Department's determination which found Claimant not disabled.

Accordingly, it is ORDERED:

1. The ALJ's Hearing Decision mailed on December 18, 2014, under registration Number 14-014828 which found Claimant not disabled is VACATED.
2. The Department's determination which found Claimant not disabled is **REVERSED**.
3. The Department shall initiate processing of the October 30, 2013, application to include any applicable requested retroactive months, to determine if all other non-medical criteria are met and inform Claimant of the determination in accordance with Department policy.
4. The Department shall supplement for any lost benefits (if any) that Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.
5. The Department shall review Claimant's continued eligibility in January, 2016, in accordance with Department policy.



Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **1/20/2015**

Date Mailed: **1/20/2015**

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NOTICE: The law provides that within 30 days of receipt of the this Decision, the Claimant may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

cc:

