

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 14-017775
Issue No.: 2009
Case No.: ██████████
Hearing Date: January 28, 2015
County: CALHOUN (DISTRICT 21)

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 three way hearing was held on January 28, 2015, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. ██████████ also appeared as the Claimant's Authorized Hearing Representative. Participants on behalf of the Department of Human Services (Department) included ██████████ ██████████ Eligibility Specialist/ Hearing Facilitator and ██████████, Eligibility Specialist.

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

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

1. On May 8, 2014 the Claimant's AHR L&S filed an application seeking Medical Assistance with a retro application MA-P (March 2014). Claimant Exhibit B
2. On June 10, 2014, the Medical Review Team denied Claimant's request, (No MRT Denial provided).
3. The Department issued a Benefits Notice dated September 30, 2014 denying the Claimant's MA-P application.
4. On December 2, 2014, Claimant's AHR submitted to the Department a timely hearing request.

5. At the time of the hearing the Claimant was 43 years old with a birth date of [REDACTED].
6. Claimant completed the 9th grade and was in special education.
7. Claimant's past employment included working in a chemical plant watching for fires. The Claimant also worked installing electrical wires in Texas oil fields. The Claimant also performed general maintenance jobs and also worked cleaning drains and in a hotel as a maintenance tech.
8. Claimant alleges physical impairments due to diabetes mellitus II, severe Coronary Artery disease, (multiple artery blockages), vascular disease bilaterally lower extremities with stenting, dyslipidemia, hypertension and severe COPD.
9. The Claimant has not alleged any mental disabling impairments.
10. Claimant's limitations have lasted for 12 months or more.
11. The Claimant's [REDACTED] alleges that it filed an application of MA-P on May 8, 2014 via [REDACTED]. CI Exhibit B and C.
12. The Department did not have a record of the May 8, 2014 application and retro application for Medical Assistance filed by [REDACTED].
13. The Department sent the Claimant's [REDACTED] a Verification Checklist on May 15, 2014 requesting verification regarding a seaking boat requesting more details. The VCL due date was 5/27/14. Exhibit 2, p3c
14. The Claimant's AHR provided the Department a letter dated June 5, 2014 advising that no verification of the Claimant's boat was required as BEM 400 excluded one vehicle per Medicaid group and per BAM 130, that verification of excluded income or/or assets is not required. Claimant Ex. C
15. The Department sent [REDACTED] a Benefit Notice dated September 17, 2014 denying Claimant's eligibility on June 10, 2014 for failure to return verification of the "BOAD" (boat) which was requested on 5/15/14/ Exhibit 2, p. 4a-b
16. The Department sent [REDACTED] a Benefit Notice dated September 30, 2014 advising [REDACTED] that the Medical Review Team denied the Claimant's request as not disabled. Exhibit 2 p. 5a-b.
17. An application for MA-P was filed on April 8, 2014 by the Claimant and a second application was filed thereafter on April 17, 2014 on Claimant's behalf by [REDACTED]. A note on the second application indicates it was not processed The VCL dated May 15, 2014 and the two Benefit Notices referenced in

paragraphs 5 and 6 above were never sent to [REDACTED]. Exhibit 2 p. 1a-1g and Exhibit 2 p. 2a-2n.

18. The Department's hearing summary advises that the Department sent the Verification Checklist (5/15/14); the Benefit Notice (9/17/14) and the Benefit Notice (9/30/14) incorrectly to [REDACTED] and did not send the notices to [REDACTED]. Exhibit 2
19. [REDACTED] received the verification checklist and the Benefit Notices dated 9/17/14 and (9/30/14) referred to in paragraph 8 above.
20. The Claimant's AHR filed a timely request for hearing on December 9, 2014 protesting September 30, 2014 denial by the MRT of Claimant's application for Medical Assistance based upon disability. Claimant Exhibit B.

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).

Here, Claimant has satisfied requirements as set forth in steps one, two and three of the sequential evaluation. The Claimant is not currently engaging in substantial gainful activity and is not employed; thus, is not disqualified at Step 1. The Claimant’s medical evidence referenced below also satisfies the requirement of severity of her impairment thus satisfying Step 2 of the required analysis.

Claimant alleges physical impairments due to diabetes mellitus, severe Coronary Artery disease, multiple arteries, and Vascular disease bilaterally of lower extremities with stenting, dyslipidemia, hypertension and severe COPD.

The Claimant has not alleged any mental disabling impairments.

The medical evidence presented follows.

The Claimant was evaluated by his treating heart doctor who has treated the Claimant since May 2014. A Fatigue Assessment was completed on December 30, 2014. This was post catheterization performed in March 2014. The Assessment advised that the Claimant has an impairment that results in fatigue and the physical findings and objective testing is consistent with the fatigue. The Diagnosis supporting the fatigue was Cardiomyopathy, ischemic which was supported by physical findings of SIP CaBBx 3V; and LM stenosis greater than 60%. The fatigue was rated Moderately Severe and would frequently interfere from 1/3 to 2/3 of the time with the patient's ability to maintain attention and concentration to sufficiently complete tasks. The fatigue would require rest periods beyond 2 -15 minute breaks and a 30 minute lunch. The Claimant was evaluated as likely absent from work due to symptoms and/or required treatment 2 days /month. The findings have been the same or similar since 5/12/14, the date of the first visit.

A New York Heart Association Classification was also completed on December 30, 2014 by the treating cardiologist. The Claimant was rated as Functionally a Class III, as a patient with cardiac disease resulting in marked limitation of physical activity. Comfortable at rest. Less than ordinary physical activity causes fatigue, palpitation, dyspnea or angina pain. The Claimant was rated Therapeutically as Class C whose ordinary physical activity should be moderately restricted and whose more strenuous activity should be discontinued.

The Claimant was seen by his treating heart doctor on October 7, 2014 at which time his coronary artery disease was rated sever for three vessels evaluated at 50% ostial LM, 100% RCA occlusion, 50-70 % LCcx and 50% LAD mid LAD 70%. At the time the Claimant was feeling somewhat better due to leg claudication procedures and was not experiencing heart pain but did have fatigue. The notes indicate an Iliac stent on 3/18/14 and a left Heart catheterization on 3/20/14.

On October 16, 2014, the Claimant underwent testing to determine the degree of stenosis and blockage of his hearts arteries and vessels. The conclusion was unstable angina. Severe multi vessel coronary artery disease with severe ostial stenosis of the left main coronary artery, as well as the proximal, as well as the mid and distal left anterior descending and subtotally occluded proximal right coronary artery. Borderline significant proximal left circumflex artery disease. Normal left ventricular systolic function. Left ventricular diastolic dysfunction. Left to right intracoronary collaterals.

On October 16, 2014, the Claimant was admitted and underwent surgery of urgent coronary artery bypass graft X 2 internal mammary artery bypass to left anterior descending saphenous vein graft bypass to distal right coronary artery with endoscopic vein harvest. The post-operative diagnosis was severe coronary artery disease. The Claimant was hospitalized for 9 days. On discharge diagnosis was chest pain with the following complications noted: acute blood loss, anemia secondary to surgery, hypokalemia, severe respiratory failure status post CABG, obstructive sleep apnea requiring pulmonary consultation and newly diagnosed Hepatitis C. Post operatively the Claimant had persistent respiratory failure. A sleep study was performed with showed severe sleep apnea. Claimant was discharge home with home with oxygen of 2 liters oxygen on exertion. A pulmonary Function test on October 17, 2014 showed an FEV1 of 70%. Also noted was chronic low back and neck pain.

The Claimant has lower extremity vascular disease with stenting bilaterally. The Claimant still experiences limitations on walking and leg pain bilaterally, and must keep his lower extremity elevated.

On May 15, 2014, the Claimant's treating Family Practice doctor completed a DHS 49. The current diagnosis was diabetes mellitus, low back pain, disc displacement cervical, and claudication. The examiner noted edema, claudication bilateral lower extremities and depressed affect. The doctor imposed the following limitations, the Claimant could lift less than 5 pounds frequently and occasionally 10 pounds. The Claimant could stand and or walk less than 2 hours in an 8 hour workday. The medical findings noted significant left leg pain due to combination of DDD and PVDC claudication.

On March 15, 2014, the Claimant was given an echocardiogram. Overall, the left ventricular systolic function was moderately impaired with an EF between 35 and 45%.

In March 2014, the Claimant underwent a stenting of his left iliac artery and continued to have bilateral leg pain. The Claimant also received stenting of his right leg in April 2014.

The Claimant was seen by his treating cardiologist on December 24, 2014, at which time the Claimant's peripheral vascular system was examined noting dorsalis pedal pulse bilateral was feeble, posterior tibial pulse bilateral – feeble. The notes also indicate stenting of the right SFA on 4/2014. The impression was the Claimant was doing well. Today's Impression noted Echocardiogram - LV fxn 45-50% low. The Claimant's hypertension was controlled – borderline.

The Claimant also credibly testified to the following circumstances and abilities as a result of his impairments. The Claimant was prescribed portable oxygen which he will be required to use the rest of his life. He has been restricted to lifting no more than five pounds and not above his waist. The Claimant experiences continuing pain in his legs bilaterally post surgery. The Claimant also has back pain. The Claimant has fallen 3

times since October 2014 due to shortness of breath. He must use a scooter when grocery shopping which he does infrequently and has been restricted from driving due to his heart condition. The Claimant can stand 5 to 10 minutes and then his legs get weak and he must sit. The Claimant experiences pain when he sits and must lie down on the couch. The Claimant could walk 20 minutes at most and with leg pain, and must use a cane. The Claimant cannot bend at the waist due to his heart condition. The Claimant also experiences tingling on the bottoms of his feet.

As previously mentioned, 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.

In light of the medical evidence presented Listing 4.04 was reviewed and examined. The Listing requires:

4.04 C Ischemic heart disease, with symptoms due to myocardial ischemia, as described in 4.00E3-4.00E7, while on a regimen of prescribed treatment (see 4.00B3 if there is no regimen of prescribed treatment), with one of the following:

C. Coronary artery disease, demonstrated by angiography (obtained independent of Social Security disability evaluation) or other appropriate medically acceptable imaging, and in the absence of a timely exercise tolerance test or a timely normal drug-induced stress test, an MC, preferably one experienced in the care of patients with cardiovascular disease, has concluded that performance of exercise tolerance testing would present a significant risk to the individual, with both 1 and 2:

1. Angiographic evidence showing:

a. 50 percent or more narrowing of a nonbypassed left main coronary artery; or

b. 70 percent or more narrowing of another nonbypassed coronary artery;
or

c. 50 percent or more narrowing involving a long (greater than 1 cm) segment of a nonbypassed coronary artery; or

d. 50 percent or more narrowing of at least two nonbypassed coronary arteries; or

e. 70 percent or more narrowing of a bypass graft vessel; and

2. Resulting in very serious limitations in the ability to independently initiate, sustain, or complete activities of daily living.

Based upon a review of the treating cardiologists evaluation referenced above and setforth in full above, which includes a fatigue test rated Moderately Severe and would frequently interfere from 1/3 to 2/3 of the time with the patient's ability to maintain attention and concentration to sufficiently complete tasks. The fatigue would require rest periods beyond 2 -15 minute breaks and a 30 minute lunch. The Claimant was evaluated as likely absent from work due to symptoms and/or required treatment 2 days /month. The findings have been the same or similar since 5/12/14, the date of the first visit.

A New York Heart Association Classification was also completed on December 30, 2014 by the treating cardiologist. The Claimant was rated as Functionally a Class III, as a patient with cardiac disease resulting in marked limitation of physical activity. Comfortable at rest. Less than ordinary physical activity causes fatigue, palpitation, dyspnea or angina pain. The Claimant was rated Therapeutically as Class C, whose ordinary physical activity should be moderately restricted and whose more strenuous activity should be discontinued.

Based on these findings it is determined that the Claimant has satisfied the requirements or its medical equivalent of listing 4.04 C.1 and 2. and, therefore, is found disabled at Step Three of the analysis.

Additionally based upon the objective medical evidence, it is clear based upon the Claimant's treating physician's evaluation winch were given deference, and the documented deteriorating nature of the Claimant's health as documented in the medical examinations, evaluations and testing, it is determined that Claimant is disabled at Step 3 with no further analysis required.

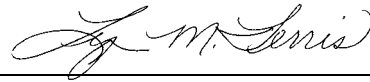
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled for purposes of the MA and/or SDA benefit program.

DECISION AND ORDER

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 shall process the Claimant's application for MA-p dated May 8, 2014 and applicable retro MA-P application, to determine the Claimant's non-medical eligibility.
2. The Department shall notify the Claimant and Claimant's AHR, L&S Associates, of its determination.
3. A review of this matter shall be conducted in February 2016.



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/27/2015**

Date Mailed: **2/27/2015**

LMF / tm

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]
[REDACTED]
[REDACTED]
[REDACTED]