

**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.: 14-004256
Issue No.: 2009
Case No.: ██████████
Hearing Date: October 22, 2014
County: WAYNE-19 (INKSTER)

ADMINISTRATIVE LAW JUDGE: Lynn 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 telephone hearing was held on October 22, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant and his wife, ██████████, who also appeared as a witness. ██████████, the Claimant's Authorized Hearing Representative (AHR), also appeared. Participants on behalf of the Department of Human Services (Department) included ██████████ 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 September 9, 2013, Claimant applied for MA-P and retro MA-P.
2. On November 12, 2013, the Medical Review Team denied Claimant's request.
3. The Department issued a Notice of Case Action dated July 31, 2014 denying the Claimant's MA-P application.
4. On June 6, 2014, Claimant's AHR submitted to the Department a timely hearing request.

5. On July 30, 2014, the State Hearing Review Team issued a decision denying the Claimant's request for a finding of disability.
6. An Interim Order was issued on October 23, 2014 requesting additional medical evidence be provided by Claimant/AHR.
7. Claimant at the time of the hearing was ■ years of age with a July 4, 1963 birth date. The Claimant was 6 feet tall and weighed 336 pounds. BMI over 40.
8. Claimant completed high school.
9. Claimant's prior employment was as a heating and cooling general manager installing and repairing commercial heating and cooling systems. The job required to the Claimant to lift up to 100 pounds. The Claimant last worked in 2011.
10. Claimant alleges physical impairments due to diabetes mellitus and peripheral neuropathy with pain in both feet, foot ulcers in both lower extremities due to diabetes, high blood pressure, severe headaches, obesity with a BMI greater than 40 and severe sleep apnea.
11. The Claimant has not alleged any mental disabling impairment.
12. Claimant's limitations have lasted and are expected to last for 12 months or more.

CONCLUSIONS OF LAW

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 his impairment thus satisfying Step 2 of the required analysis.

Claimant alleges physical impairments due to diabetes mellitus and peripheral neuropathy with pain in both feet, foot ulcers in both lower extremities due to diabetes, high blood pressure, severe headaches, obesity with a BMI greater than 40 and severe sleep apnea.

The Claimant has not alleged any mental disabling impairments.

A summary of the medical evidence presented in this case follows.

The Claimant was admitted for a 10 day hospital stay due to cellulitis and abscess on September 2, 2013. At the time, the Claimant was seen for worsening diabetic foot ulceration on the right side and type II diabetes uncontrolled. During his stay, the Claimant's abscess was drained and an infectious disease Doctor recommended removal of all infected tissue and bone. The Claimant had his foot debrided and the bone cultures were positive for strep and Candida, but negative for osteomyelitis. The patient was discharged on antibiotics and diabetes education. The Claimant was to follow up with outpatient treatment and was discharged in stable condition. The Claimant's restrictions were partial weight bearing only as tolerated on post-operative shoe on the right foot.

A Medical Examination report was completed by the Claimant's family medicine practitioner and Doctor on or about November 20, 2014. The diagnosis was high blood pressure, diabetes, headaches and neuropathy with chronic pain and sleep apnea. At the time of the exam, the Claimant was 6 feet in height and weighed 345 pounds. The Doctor noted that the Claimant's feet were swollen and there was a diagnosis of neuropathy in both lower extremities. The Claimant's condition was noted as deteriorating. Limitations were imposed which were expected to last more than 90 days. The Claimant could frequently lift less than 10 pounds and occasionally 10 pounds. The Claimant could not operate foot or leg controls with either leg. The medical findings supporting the limitations were obesity, high blood pressure, peripheral neuropathy and uncontrolled diabetes. The examiner also noted that he needs his wife's help as he has recently fallen. No limitations were imposed with regard to the use of the Claimant's hands and arms. The Doctor also completed an application for a disability parking card, noting the Claimant must use a cane to walk and was unable to walk long distances over 20 feet. The application also noted that the Claimant has trouble with his feet swelling and neuropathy.

The Claimant's podiatrist completed a Medical Examination Report on October 25, 2014. The diagnosis was bilateral infected ulcerations with history of osteomyelitis noting recurrent ulcerations to both feet with infection, as well as diabetes with neuropathy. The examination also noted sensory neuropathy bilaterally in both feet. The Claimant was noted as stable and limitations were imposed indicating the Claimant could lift no weight and could stand and/or walk less than two hours in an eight-hour workday and requires a cane for ambulation. The Doctor also noted that the Claimant cannot sit for extended periods of time or stand. At the time of the exam the medical findings supporting the limitations were right digital ulcer and the left plantar infected ulcer. Clinical signs of infection including odor and drainage.

The medical evidence presented indicates that the Claimant continues to treat for his foot ulcers; his latest treatment was on October 25, 2014 for his ulcerations bilateral in his feet with hyperkeritotic rim.

In September 2014, one year post hospitalization for foot ulcers, the Claimant was seen for foot ulcers on both feet one measuring .8 cm x .4 cm, and ulcers on the left foot which were debrided to the subcutaneous tissue and the hyperkeratotic tissue was reduced.

On July 12, 2014, the Claimant presented with multiple ulcers bilateral both feet. Again the ulcers were debrided and daily dressings were to be applied.

The Claimant was seen in June 2014 for follow-up for the evaluation of an ulcer of the fifth metatarsal head of the left foot, and an additional ulcer on the right foot with mycotic toenails. At the time, the wounds were debrided and mycotic toenails were also treated.

On May 31, 2014 the Claimant presented for follow-up due to foot problems and full foot ulcers of the left foot without pus or drainage.

The Claimant was seen on April 19, 2014 for ulceration on the plantar aspect of both feet. The wound was debrided of skin and subcutaneous tissue up to 20 cm².

The Claimant was seen by his treating Doctor in March 31, 2014, due to a foot ulcer on his third right toe and left plantar forefoot. At the time, the ulcers were to debrided and antibiotics were applied with wound care instructions. The Claimant was referred to a podiatrist.

The Claimant was seen at the hospital on March 23, 2014, complaining of foot injury and foot ulcer to the left foot with throbbing and aching pain. The ulcer was about 3 cm. An x-ray of the foot demonstrated generalized osteopenia without evidence of acute fracture or dislocation as well as calcaneal spurs.

The Claimant underwent sleep apnea evaluation, and a report was issued on September 8, 2014, which concluded that the Claimant was diagnosed with severe sleep apnea with morbid obesity.

The Claimant's testimony regarding his physical impairments was deemed credible and was supported by and consistent with the evaluations of his doctors and ongoing foot ulceration. The Claimant at best could make himself a simple sandwich due to problems standing any duration on his feet. The Claimant could walk only 15 to 20 feet due to foot pain. The Claimant also has recently fallen due to his foot neuropathy. The Claimant must ambulate with a doctor-prescribed cane. The Claimant only wears slip on shoes due to foot swelling and ulcers. The Claimant could carry 5 pounds if his hand was closed due to his neuropathy. The Claimant could sit approximately 25 minutes, due to his feet swelling requiring him to elevate his feet.

Listing 8.04 **8.04 *Chronic infections of the skin or mucous membranes***, with extensive fungating or extensive ulcerating skin lesions that persist for at least 3 months despite continuing treatment as prescribed was reviewed in light of the medical evidence.

Based upon the extensive and ongoing treatment for foot ulcers and osteomyelitis in both feet with infection, and based upon both the Claimant's treating doctor's evaluations referenced above, it is determined that the medical evidence presented meets Listing 8.04 or its medical equivalent. As the Listing is met, no further analysis is required and the Claimant is determined to be disabled at Step 3.

DECISION AND ORDER

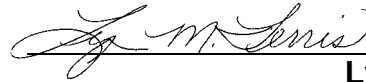
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled for purposes of the MA-P and/or SDA benefit program.

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 September 9, 2013 and applicable retro, if not done previously, to determine Claimant's non-medical eligibility.

2. A review of this case shall be set for January 2016.



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

Date Signed: **1/16/2015**

Date Mailed: **1/16/2015**

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

