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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-019558
Issue No.: 2009
Case No.: [redacted]
Hearing Date: February 19, 2015
County: Wayne-District 17

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 3-way telephone hearing was held on February 19, 2015, from Lansing, Michigan. Claimant, represented by [redacted] of [redacted], personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [redacted]

During the hearing, Claimant waived the time period for the issuance of this decision in order to submit additional medical evidence. This new evidence is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) 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 November 14, 2013, Claimant filed an application for MA/Retro-MA benefits alleging disability.

2. On December 20, 2013, the Medical Review Team (MRT) denied Claimant's application for MA/Retro-MA indicating Claimant was capable of performing other work.

3. On February 11, 2014, the Department sent Claimant notice that his application for MA/Retro-MA had been denied.

4. On April 2, 2014, Claimant's Authorized Hearing Representative filed a timely request for a hearing to contest the Department's negative action.

5. Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

6. Claimant is a 47 year old man whose birthday is [redacted]. Claimant is 5'6" tall and weighs 265 lbs.

7. Claimant does not have an alcohol or nicotine problem. He drinks 3 – 4 beers a day, four times a week.

8. Claimant has a driver's license and is able to drive.

9. Claimant has an eleventh grade education.

10. Claimant is not currently working. Claimant last worked in 2009.

11. Claimant alleges disability on the basis of chronic kidney disease stage 3, morbid obesity, osteoarthritis, diabetes, uncontrolled high blood pressure, congestive heart failure, high cholesterol, gastroesophageal reflux disease, obstructive sleep apnea, hypothyroidism, anemia, coronary artery disease, chronic obstructive pulmonary disease, severe to moderate mitral regurgitation and tricuspid regurgitation.

12. Claimant's impairments have lasted, or are expected to last, continuously for a period of twelve months or longer.

13. Claimant's complaints and allegations concerning his impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

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.

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 CFR 416.901). DHS, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also

is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses. Michigan administers the federal Medicaid program. In assessing eligibility, Michigan utilizes the federal regulations.

Relevant federal guidelines provide in pertinent part:

> "Disability" is:
>
> . . . 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.

The federal regulations require that several considerations be analyzed in sequential order:

> . . . We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further. 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). If no, the analysis continues to Step 2.

2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.909(c).

3. Does the impairment appear on a special Listing of Impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(d).

4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA.

If no, the analysis continues to Step 5. Sections 200.00-204.00(f)?

5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application Claimant has the burden of proof pursuant to:

> . . . You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

> Medical reports should include --
>
> (1) Medical history.
>
> (2) Clinical findings (such as the results of physical or mental status examinations);
>
> (3) Laboratory findings (such as ultrasounds, X-rays);
>
> (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment. 20 CFR 416.929(a). The medical evidence must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e). You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. 20 CFR 416.927(a)(1).

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).

Applying the sequential analysis herein, Claimant is not ineligible at the first step as Claimant is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a *de minimus* standard. Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen,* 880 F2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Claimant's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with a summary of the relevant submitted medical documentation.

On [redacted], Claimant was admitted to the hospital complaining of shortness of breath. He was diagnosed with hypertension, acute on chronic combined systolic and diastolic congestive heart failure, urinary tract infection, hypokalemia, anxiety, acute kidney injury, obesity, hypertensive emergency, diabetes, osteoarthritis, depression and asthma. Claimant was discharged on [redacted], in stable condition with a diagnosis of hypertension emergency resolved, valvular heart disease, moderate mitral regurgitation, sever tricuspid regurgitation, pulmonary hypertension, obstructive sleep apnea likely, diabetes, anemia stable, chronic kidney disease worse, acute diastolic congestive heart failure/recent cardiomyopathy (ejection fraction 30% in January, 2013, now 55-60%), hypokalemia resolved, osteoarthritis, depression, asthma, trichomoniasis treated and alcohol abuse. At the time of discharge, his BUN and creatinine was elevated. He was discharged with home healthcare due to Claimant's "homebound" status.

Claimant was admitted to the hospital on [redacted], and diagnosed congestive heart failure exacerbation. The 2D Echo/Doppler/Color Doppler revealed a severely dilated left atrium, moderately dilated right atrium, and mild to moderate tricuspid regurgitation. This was compared to the Doppler in January, 2013, where Claimant was diagnosed with critical coronary artery disease, a mildly compromised left ventricle function with an ejection fraction close to 45%, hypertensive heart disease and mild

cardiomyopathy. He was discharged on [redacted], in fair condition with a discharge diagnosis of hypertensive emergency, acute diastolic congestive heart failure, acute kidney injury, and obesity.

On [redacted], Claimant's cardiologist noted Claimant has a history of hypertension and Type 2 diabetes mellitus, since 2008. Claimant was diagnosed with congestive heart failure a year ago. Claimant has shortness of breath after walking a block, occasional paroxysmal nocturnal dyspnea and palpitations. The cardiologist diagnosed Claimant with valvular heart disease with moderate to severe mitral regurgitation and tricuspid regurgitation. Claimant also has heart failure with preserved ejection fraction. A new 2D echocardiogram was scheduled and the cardiologist indicated that if the mitral regurgitation is significant, then left heart catheterization may be needed.

Ruling any ambiguities in Claimant's favor, this Administrative Law Judge (ALJ) finds that Claimant meets both. The analysis continues.

The third step of the analysis looks at whether an individual meets or equals one of the Listings of Impairments. 20 CFR 416.920(d). Claimant does not. The analysis continues.

Claimant has been medically described as obese which condition likely exacerbates his impairments.

> Obesity is a medically determinable impairment that is often associated with disturbance of the respiratory system, and disturbance of this system can be a major cause of disability in individuals with obesity. The combined effects of obesity with respiratory impairments can be greater than the effects of each of the impairments considered separately. Therefore, when determining whether an individual with obesity has a listing-level impairment or combination of impairments, and when assessing a claim at other steps of the sequential evaluation process, including when assessing an individual's residual functional capacity, adjudicators must consider any additional and cumulative effects of obesity. Listing 3.00(I).

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. 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 a checker 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.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once Claimant reaches Step 5 in the sequential review process, Claimant

has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services,* 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that Claimant has the residual functional capacity for substantial gainful activity.

The medical information indicates that Claimant suffers from chronic kidney disease stage 3, morbid obesity, osteoarthritis, diabetes, uncontrolled high blood pressure, congestive heart failure, high cholesterol, gastroesophageal reflux disease, obstructive sleep apnea, hypothyroidism, anemia, coronary artery disease, chronic obstructive pulmonary disease, severe to moderate mitral regurgitation and tricuspid regurgitation.

Claimant credibly testified that he has a limited tolerance for physical activities and is unable to stand or sit for lengthy periods of time. Claimant has utilized a cane for the past 6 years. He is unable to cook his own meals or grocery shop. He can walk half a block, stand for 10 minutes using his can, sit for 10-15 minutes and carry 5 pounds.

Claimant is 47 years old, with an eleventh grade education. Claimant's medical records are consistent with his testimony that he is unable to engage in even a full range of sedentary work 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).

The Department has 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. Accordingly, this Administrative Law Judge concludes Claimant is disabled for purposes of the MA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department erred in determining Claimant is not currently disabled for MA/Retro-MA eligibility purposes.

Accordingly, the Department's decision is **REVERSED**, and it is ORDERED that:

1. The Department shall process Claimant's November 14, 2013, MA/Retro-MA application, and shall award him all the benefits he may be entitled to receive, as long as he meets the remaining financial and non-financial eligibility factors.

2. The Department shall review Claimant's medical condition for improvement in April, 2016, unless his Social Security Administration disability status is approved by that time.

3. The Department shall obtain updated medical evidence from Claimant's treating physicians, physical therapists, pain clinic notes, etc. regarding his continued treatment, progress and prognosis at review.

It is SO ORDERED.

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

Date Signed: **3/25/2015**

Date Mailed: **3/25/2015**

VLA/las

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]