

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

IN THE MATTER OF:



Reg. No.: 14-010343-RECON
REHD/RECON
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: November 18, 2014
County: Wayne-District 19 (Inkster)

SUPERVISING ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 November 18, 2014, and mailed on November 19, 2014, in the above-captioned matter.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 792.11015 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 27, 2015.

ISSUE

Did the ALJ erred in affirming the Department of Health and Human Service's decision to deny the Claimant's application for disability Medical Assistance (MA-P) benefits?

FINDINGS OF FACT

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

1. The Findings of Fact Numbers 1 through 5 under Registration Number 14-010343 are incorporated by reference.
2. On November 18, 2014, a hearing was held resulting in a Hearing Decision mailed on November 19, 2014, that found Claimant was not disabled.
3. On December 19, 2014, Claimant's submitted a Request for Rehearing/Reconsideration.
4. On January 27, 2015, the MAHS issued an Order Granting Reconsideration.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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.

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, Step 1 considers the claimant's current work activity. In the record presented, Claimant last worked in October, 2013, and was not involved in substantial gainful activity at the time. Therefore, Claimant cannot be 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 the following: lumbar spinal stenosis, cervical stenosis, cervical myelopathy, cauda equine compression, leukocytosis, penile glands hyperemia, post C5-C7 anterior cervical decompression and fusion, post anterior cervical plating, post L4-L5 decompressive laminectomy and hydrocephalus.

In support of his claim, Claimant submitted medical records from a hospitalization on October 28, 2013. These records showed that Claimant presented to the emergency department having difficulty with ambulation, with bowel and urinary incontinence. After evaluation, the objective medical records showed Claimant had acute delirium, possibly

related to alcohol withdrawal, as well as ataxia with evaluation for possible spinal cord issues, lower extremity weakness and hydrocephalus. On October 29, 2013, Claimant underwent C5-C7 anterior cervical decompression and fusion, as well as anterior cervical plating. Claimant also had a psychiatric evaluation on October 29, 2013. Diagnosis: Axis I: Mood disorder, alcohol dependence; Axis II: Deferred; Axis III: Per chart; Axis IV: Chronic mental illness, medical issues, substance abuse, support structure and homelessness; Axis V: GAF=30. Records from Claimant's neurologist from October 30, 2013, indicated Claimant had low back pain with urinary incontinence and had difficulty ambulating likely secondary to severe lumbar stenosis. Claimant also had an altered mental status, suspected to be secondary to delirium superimposed on underlying degenerative brain disease due to long history of longstanding alcohol abuse.

The records also showed Claimant was discharged from the hospital on December 4, 2013, with a diagnosis of hydrocephalus, lumbar spinal stenosis, cervical spinal stenosis, acute renal failure, hypokalemia, hypertension, myelopathy with cervical spondylosis and stenosis. Claimant had a prolonged stay in the hospital, having been admitted on October 28, 2013. He had clostridium difficile colitis which later improved. He was voiding better and walking better. He was seen by physical therapy. He was provided with a wheeled walker and discharged in stable condition and transferred to a foster home.

On [REDACTED], the records showed Claimant was admitted to the hospital with a diagnosis of cauda equine compression and lumbar spinal stenosis. He initially presented with complaints of bilateral lower extremity weakness, bowel and bladder incontinence and upper extremity weakness. He was wearing diapers because he had no control, and reported numbness of his genitals and anus, as well as both legs. He ambulated with the assistance of a walker. His gait was described as "wide-stanced" and he was unable to perform heel and toe walk within normal limits. He was found to have concurrent cervical stenosis as well as lumbar stenosis. He underwent cervical decompressive surgery. He underwent an L4-L5 decompressive laminectomy on August 27, 2014. Claimant was discharged on August 29, 2014, to a rehabilitation facility with restrictions on ambulating and no lifting, pushing, or pulling.

During the hearing, Claimant testified that he felt constant pain in his back and used a cane for walking. He also testified that he wears a diaper because he has no control over his bowels and is incontinent.

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.

At Step 3 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 objective medical evidence confirms treatment/diagnoses of lumbar spinal stenosis, cervical stenosis, cervical myelopathy, cauda equine compression, leukocytosis, penile glands hyporemia, post C5-C7 anterior cervical decompression and fusion, post anterior cervical plating, post L4-L5 decompressive laminectomy and hydrocephalus.

Listing 1.00 (musculoskeletal system), Listing 5.00 (digestive 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, 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 a carpenter 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). At the time of hearing, Claimant had graduated from high school, was 47 years old and was, thus, considered to be a younger individual for MA-P purposes. 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.

As a result, the ALJ's determination which found Claimant not disabled at Step 2 (non-severe impairment), then alternatively not disabled at Step 3 (listing of impairments), Step 4 (substantial gainful activity) and/or Step 5 (residual functional capacity) are VACATED and the Department's determination which found Claimant is not disabled is REVERSED.

DECISION AND ORDER

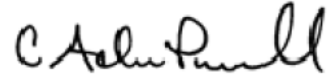
Based on the above findings of fact and conclusions of law, the undersigned finds that the assigned Administrative Law Judge erred in affirming the Department's determination which found Claimant not disabled.

Accordingly, it is ORDERED:

1. The ALJ's Hearing Decision mailed on November 19, 2014, under registration Number 14-010343 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 November 19, 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 May, 2016, in accordance with Department policy.

IT IS SO ORDERED.



C. Adam Purnell
Supervising Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: 05/28/2015

Date Mailed: 05/28/2015

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.

CAP/sw

cc:

