

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

**IN THE MATTER OF:**

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████████████████████  
████████████████████

Reg. No.: 15-002628  
Issue No.: 2009  
Case No.: ██████████  
Hearing Date: March 30, 2015  
County: OAKLAND-DISTRICT 3  
(SOUTHFIELD)

**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, an in person hearing was held on March 30, 2015, from Southfield, Michigan. Participants on behalf of Claimant included the Claimant. The Claimant's Authorized Hearing Representative, ██████████ ██████████ appeared on Claimant's behalf. Participants on behalf of the Department of Health and Human Services (Department) included ██████████ ██████████ Eligibility Specialist/Hearing Facilitator.

**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. The Claimant applied for MA-P on June 5, 2014. The Claimant also applied for retro MA for March, April and May 2014.
2. The Medical Review Team denied Claimant's request on November 21, 2014.
3. The Department sent the Claimant a Notice of Case Action on November 24, 2014.
4. The Claimant filed a timely hearing request on February 16, 2015.
5. An Interim Order was issued on March 31, 2015 requesting the Claimant to provide an eye examination report and a DHS 49 from the Claimant's treating eye doctor.

6. The Claimant has alleged physical disabling impairments which include severe diabetic retinopathy.
7. The Claimant's past relevant work was as a firefighter, a certified welder, and a fleet manager for a car rental company. The Claimant has attended college.
8. At the time of the hearing the Claimant was [REDACTED], [REDACTED] birth date. The Claimant was 6 feet tall and weighed 195 pounds.
9. The Claimant has not alleged any mental disabling impairments

### **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and 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 Department of Human Services) 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.

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 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).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity and, therefore, is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant 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 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).

The Claimant has alleged physical disabling impairments which include severe diabetic retinopathy.

The Claimant has not alleged any mentally disabling impairments.

A summary of the medical evidence follows.

The Claimant provided an eye examination report from his treating doctor completed [REDACTED]. The doctor has treated the Claimant for three years. The eye examination report indicates that the Claimant's visual defect began at age 30 in both eyes. The Diagnosis was severe diabetic retinopathy with laser surgery and bilateral vitrectomy. The Claimant's vision with best correction is 20/20 in the right eye and 20/25 in left eye. The report notes there is no constriction in the peripheral field of vision. The prognosis was uncertain. The limitations of activities noted that patient has recurrent vitreous hemorrhage with lifting. Long term prognosis is guarded.

The Claimant's eye doctor also completed a DHS 49. The diagnosis was severe diabetic recurrent vitreous hemorrhage both eyes due to severe diabetic retinopathy. The clinical impression at the time was stable. The report was completed on [REDACTED] 2015. Limitations were imposed which included frequent lifting of less than 10 pounds and occasionally 10 pounds. The Claimant could stand and/or walk about 6 hours in an 8 hour work day. No mental limitations were noted.

The Claimant takes insulin 8 to 9 times daily since the age of 12 and is diagnosed with Diabetes Type 1 with diabetic retinopathy. The Claimant also reported hypertension. The Claimant has had several eye surgeries, one in [REDACTED] and one in [REDACTED]

On [REDACTED] the Claimant was scheduled for vitreoretinal surgery, which was cancelled due to elevated blood pressure, 197/115.

On [REDACTED] the Claimant had vitreoretinal surgery. The reason for the surgery was due to decreased vision in his right eye caused by a vitreous hemorrhage. The Claimant underwent a vitrectomy laser surgery. Prior to this surgery the Claimant underwent a vitrectomy for proliferative diabetic retinopathy in the right eye and traction retinal detachment on [REDACTED]. Post-operative he had no significant visual recovery due to recurrent vitreous hemorrhage. During the May surgery a dense vitreous hemorrhage material was removed and cleared. The Claimant was discharged the same day. Post-operatively the Claimant was restricted from most physical activity, including bending from the waist, driving, airplane travel and lifting objects heavier than 10 pounds until cleared by his doctor.

On [REDACTED] the Claimant was seen due to decreased vision in the left eye. Pre-operative diagnosis was proliferative diabetic retinopathy, left eye with retinal detachment.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented objective medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. Accordingly, the 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, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant asserts disabling diabetic retinopathy with vitreous hemorrhage.

The Claimant suffers from diabetic retinopathy in both eyes and has had several surgeries. Listing 2.00 specifically states:

***What are visual disorders?*** Visual disorders are abnormalities of the eye, the optic nerve, the optic tracts, or the brain that may cause a loss of visual acuity or visual fields. A loss of visual acuity limits your ability to distinguish detail, read, or do fine work. A loss of visual fields limits your ability to perceive visual stimuli in the peripheral extent of vision.

2.02 Requires that the visual disorder requires test corrected central visual acuity and any visual field loss. If the visual disorder does not satisfy the criteria of 2.02, 2.03 or 2.04 a description of how your visual disorder affects your ability to function is considered. In this case Listing 2.02 loss of central visual acuity and 2.03 contraction of the visual fields in the better eye were examined and the listings were not demonstrated as met. The eye examination report notes best corrected vision of 20/20 right and 20/25 left with no peripheral visual field constriction. Thus it is determined that the Listing is not met.

Ultimately, it is found that the Claimant suffers from some medical conditions; however, the Claimant's impairments do not meet the intent and severity requirement of either Listing 2.02 or 2.03. A careful review of the medical evidence was made and it was found that the listing was not met. Therefore, the Claimant cannot be found disabled, or not 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 claimant'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.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a (a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity to the demands of past relevant work must be made. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment along with an individual's age, education, and work

experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (e.g., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The Claimant's prior work history consists of employment as a firefighter which, due to the lifting requirements of 50 to 100 pounds and the strenuous nature of this job, the Claimant can no longer preform this job. The Claimant was certified as a welder and fabricator but can no longer do this job due to the welding arc brightness and Claimant's eye sensitivity. Claimant was also a fleet manager for a car rental company which required him to drive and be on his feet. The Claimant completed some college and has technical training and certification as a welder. In light of the Claimant's testimony and records and in consideration of the Occupational Code, the Claimant's prior work is classified as semi-skilled. It is determined that the Claimant can no longer do such work.

The Claimant testified that he is able to walk two blocks, and can sit all day and experiences leg fatigue when standing for more than 20 minutes. The Claimant can perform a squat and bend at the waist, shower and dress himself. There is nothing wrong with Claimant's hands/arms or legs/feet. The Claimant indicated that he could carry 10 pounds. The Claimant is able to grocery shop and cook and do cleaning at his apartment including vacuuming and laundry. The Claimant cannot drive at night.

If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920. In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is not able to return to past relevant work; due in large part the lifting and being on his feet all day. Thus, the fifth step in 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). The Claimant is [REDACTED] and, thus, is considered to be an individual of younger age for MA purposes. The Claimant has a high school education and some college. 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).

In this case, the evidence reveals that the Claimant has a medical impairment due to diabetic retinopathy which can affect his vision when he suffers a bleed. The Claimant's treating eye doctor did impose lifting limitations of 10 pounds occasionally and evaluated the Claimant as capable of standing and/or walking about 6 hours out of an 8 hour day work day. The Claimant testified that he can carry 10 pounds and is limited in walking to 2 blocks. The Claimant is receiving ongoing treatment and follow up for his retinopathy.

Based upon the foregoing objective medical evidence, there is no evidence that the Claimant would have difficulty performing work while sitting and has the use of his hands and both feet to operate foot controls. Sedentary work requires lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

After a review of the Claimant's medical records, reports from his treating physician, and Claimant's own testimony, Claimant has failed to establish limitations which would compromise his ability to perform sedentary work activities on a regular and continuing basis.

In consideration of the foregoing and in light of the objective limitations, it is found that the Claimant does retain the residual functional capacity for work activities on a regular and continuing basis to meet at the physical and mental demands required to perform sedentary work pursuant to rule 201.28. After review of the entire record, the Findings of Fact and Conclusions of Law, and in consideration of the Claimant's age, education, work experience and residual functional capacity, it is found that the Claimant is not disabled for purposes of the MA-P program at Step 5.

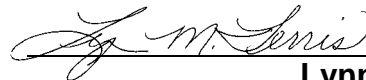
**DECISION AND ORDER**

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 not disabled for purposes of the MA–P benefit program.

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 not disabled for purposes of the MA and/or SDA benefit program.

**DECISION AND ORDER**

Accordingly, the Department’s determination is AFFIRMED.



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

Date Signed: **6/9/2015**

Date Mailed: **6/9/2015**

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**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.

