

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 15-004221  
Issue No.: 2009; 4009  
Case No.: [REDACTED]  
Hearing Date: June 9, 2015  
County: Saginaw

**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, an in-person hearing was held on June 9, 2015, in Saginaw, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of the Department of Health and Human Services (Department) included Eligibility Specialist [REDACTED].

**ISSUE**

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) and 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 February 10, 2015, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
2. On March 6, 2015, the Medical Review Team (MRT) denied Claimant's application for MA/Retro-MA indicating Claimant was capable of performing other work. SDA was denied for lack of duration. (Depart Ex. A, pp 1-3).
3. On March 10, 2015, the Department sent Claimant notice that his application for MA/Retro-MA and SDA had been denied.
4. On March 27, 2015, Claimant filed a 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 53 year old man whose birthday is [REDACTED]. Claimant is 5'4" tall and weighs 128 lbs.
7. Claimant does not have an alcohol, drug or nicotine problem.
8. Claimant has a driver's license but is unable to drive due to his medications.
9. Claimant has an eleventh grade education through special education.
10. Claimant is not currently working. Claimant last worked in 2013.
11. Claimant alleges disability on the basis of atrial arrhythmia status post pace maker defibrillator since 2010, ventricular tachycardia, degenerative disc disease, arthritis, cervical stenosis, cervical spondylosis, left facial numbness, syncope, occipital neuralgia, congenital fusion of thoracic spine T1-T2, hypertension, anemia, dyslipidemia, vitamin D deficiency, bilateral carpal tunnel syndrome and depression.
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 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.

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).

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).

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 (10<sup>th</sup> Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10<sup>th</sup> Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6<sup>th</sup> 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 (1<sup>st</sup> 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 (1<sup>st</sup> 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.

The medical information indicates that Claimant suffers from atrial arrhythmia status post pace maker defibrillator since 2010, ventricular tachycardia, degenerative disc disease, arthritis, cervical stenosis, cervical spondylosis, left facial numbness, syncope, occipital neuralgia, congenital fusion of thoracic spine T1-T2, hypertension, anemia, dyslipidemia, vitamin D deficiency, bilateral carpal tunnel syndrome and depression.

The CT of the cervical spine from [REDACTED], shows minimal degenerative disc space narrowing at C5-C6 with adjacent facet changes at C7-T1 and T1-T2 level end with congenitally fused T2-T3 vertebra. No acute compression fracture or subluxation in the cervical spine. Also, mild spondylotic compromise of the right C7 neural foramen at C6-C7 disc secondary to uncovertebral osteophytic spur. No central canal stenosis.

On [REDACTED], Claimant was released to return to work with a 25 pound weight restriction by his primary care provider. (See Dept. Ex A, p 49).

The echocardiogram on [REDACTED], revealed an estimated ejection fraction of 60% and overall normal biventricular systolic function. The cardiologist released Claimant back to work with 25 pound weight restrictions. (See Dept. Ex A, p 118).

On [REDACTED], Claimant underwent a neurosurgeon consultation for evaluation of neck pain. He told the neurosurgeon his problems began on [REDACTED], [REDACTED] when he was driving and blacked out. He was taken to the emergency department and admitted for three days of observation. He was unable to have an MRI because he developed an arrhythmia in 2010 for which he had placement of a pacemaker defibrillator which has been revised at least twice. On exam, Claimant appeared to be in moderate discomfort. Motor tone of the neck was abnormal with paraspinal spasm on both sides, but considerably worse on the right than the left. Gait, station, heel walking and toe walking were normal. Left arm inspection and motor tone were abnormal. He had a slightly dysarthric speech pattern. He had hypersensitivity in the left hand in the thumb, index and long fingers to pinprick, otherwise normal sensation to pain. Diagnosis: cubital tunnel syndrome on left, carpal tunnel syndrome of left wrist, cervical myofascial strain, occipital neuralgia, temple tenderness, congenital fusion of thoracic spine T1-T2, cervical spondylosis without myelopathy, and left facial numbness. He was prescribed left neutral wrist splint and left elbow pad as well as soft collar reversed, in addition to a muscle relaxant.

Claimant's defibrillation testing of the implantable cardioverter defibrillator on [REDACTED] revealed normal functioning. Sensing and thresholds were evaluated and were within normal limits. Claimant denied dizziness, syncope, or palpitations.

On [REDACTED], Claimant followed up with his neurosurgeon complaining of neck pain. Claimant admitted to not wearing the cervical collar out and about because it made him look like an "easy target." Claimant told the neurologist that he felt his cubital tunnel symptoms were improving since he began wearing the wrist splints and elbow pads. Claimant stated his hands felt stronger than before.

Ruling any ambiguities in Claimant's favor, this Administrative Law Judge (ALJ) finds that Claimant meets both duration and severity. 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.

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 stocker and as such, Claimant would be unable to perform the duties associated with his past work given his current health conditions. Likewise, Claimant's past work skills will not transfer to other occupations. Accordingly, Step 5 of the sequential analysis is required.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon Claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite you limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

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 (6<sup>th</sup> 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.

Claimant testified that he has a limited tolerance for physical activities and is unable to stand or sit for lengthy periods of time. He stated that since his motor vehicle accident on June 28, 2013, he has not been released back to work and is on a 10 pound weight restriction. Claimant wears a heart monitor and states he is required to check his heart rate every 2 hours, even at night. He said he also wears a cervical collar to help alleviate his neck pain, which he was not wearing at the hearing. In addition, he wears bilateral wrist splints and elbow pads to help the carpal tunnel syndrome.

After careful review of Claimant's medical records and the Administrative Law Judge's personal interaction with Claimant at the hearing, this Administrative Law Judge finds that Claimant's testimony was exaggerated and at times, less than credible.

Claimant testified he has a 10 pound weight restriction and has never been released back to work since his June, 2013, motor vehicle accident. Medical records indicate Claimant was released back to work on July 11, 2014, by his primary care provider and again on July 22, 2014, by his cardiologist, with a 25 pound weight restriction.

Claimant testified that he wears a heart monitor and is required to check his heart rate every two hours, even at night while sleeping. Medical records indicate his heart rate is normal, and he has no complaints regarding dizziness, syncope, or palpitations. There was no evidence in the record instructing Claimant to check his heart rate every two hours.

Furthermore, medical records indicate that since Claimant was prescribed the cervical collar in September, 2014, he reported his neck pain has improved. He also reported the pain in his wrists has improved since being prescribed the wrist splints and elbow pads in September, 2014.

However, based on Claimant's vocational profile (approaching advanced age, Claimant is 53, has a eleventh grade education through special education and an unskilled work history), this Administrative Law Judge finds Claimant's MA/Retro-MA benefits are approved using Vocational Rule 201.09 as a guide. Consequently, the Department's denial of his February 10, 2015, MA/Retro-MA and SDA application cannot be upheld.

### **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 and SDA eligibility purposes.

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

1. The Department shall process Claimant's February 10, 2015, MA/Retro-MA and SDA 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 June, 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, Director  
Department of Health and Human  
Services

Date Signed: **6/11/2015**

Date Mailed: **6/11/2015**

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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.

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:

