

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-005022
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 02, 2015
County: GENESEE-DISTRICT 2 (MC CR

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

HEARING DECISION

Following the 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 telephone hearing was held on June 2, 2015, from Lansing, Michigan. Participants on behalf of the Claimant included the Claimant, [REDACTED]; his mother, [REDACTED] and his Authorized Hearing Representative (AHR), [REDACTED] of [REDACTED]. Participants on behalf of the Department of Health and Human Services (Department) included Hearing Facilitator, [REDACTED].

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance (MA) benefit programs?

FINDINGS OF FACT

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

1. On August 6, 2013, the Claimant's AHR applied for MA and Retro-MA to July, 2013.
2. On February 26, 2015, the Medical Review Team denied the Claimant's request.
3. On March 31, 2015, the Claimant's AHR submitted to the Department a request for hearing.
4. The Claimant is 38 years old.
5. The Claimant completed education through the eighth grade and was in special education throughout school. The Claimant cannot comprehend what he reads and cannot compute basic math.

6. The Claimant has employment experience and testified that he last worked mowing lawns in 2013 and had to quit because of his cardiac condition.
7. The Claimant's limitations have lasted for 12 months or more.
8. The Claimant suffers from neck, shoulder and back problems; coronary artery disease with heart stenting and hypertension; osteomyelitis and previously broken right leg and several resulting surgeries due to a bad reaction to the metal in the leg; deafness in one ear; headaches and swelling of the side of his face and a cyst on his tailbone. The Claimant also suffers from high anxiety, panic disorder and agoraphobia.
9. The Claimant has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.

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.

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. 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, the Claimant has satisfied requirements as set forth in steps one, two and three of the sequential evaluation. However, the Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Therefore, vocational factors will be considered to determine the Claimant's residual functional capacity to do relevant work.

In the present case, the Claimant has been diagnosed with The Claimant suffers from neck, shoulder and back problems; coronary artery disease with heart stenting and hypertension; osteomyelitis and previously broken right leg and several resulting surgeries due to a bad reaction to the metal in the leg; deafness in one ear; headaches and swelling of the side of his face and a cyst on his tailbone. The Claimant also suffers from high anxiety, panic disorder and agoraphobia. The Claimant has a number of symptoms and limitations, as cited above, as a result of these conditions. The Claimant's treating physician noted that the Claimant is on a 5 pound lifting restriction.

The objective medical evidence in the record indicates that in July 2013 the Claimant was hospitalized for angina and was given stenting. In February 2014 he was diagnosed with cervical stenosis. An MRI of the cervical spine showed spondylotic changes. In March 2014 he was hospitalized for cervical radiculopathy. In May 2014 the Claimant was diagnosed with panic disorder with agoraphobia and was given a GAF of 51 which is indicative of moderate difficulty in social, occupational or school functioning. The Claimant has been seen for pain management and neurosurgery and continues to be seen by his cardiologist. He has been diagnosed with chest pain, shortness of breath, anxiety with panic attacks and neck and left shoulder pain with decreased range of motion of the neck.

The fourth step of the analysis to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the claimant from doing past relevant work. In the present case, the Claimant's past employment was a construction laborer and then he mowed lawns. This required the Claimant to be standing, pushing, walking, as well as crouching and squatting. The Claimant's impairments prevent the Claimant from being able to perform the duties for such a position. This Administrative Law Judge finds, based on the medical evidence and objective, physical, and psychological findings, that the Claimant is not capable of the physical or mental activities required to perform any such position. 20 CFR 416.920(e).

In the final step of the analysis, the trier of fact must determine if the Claimant's impairment(s) prevent the claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

1. residual functional capacity defined simply as "what can you still do despite your 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 her limitations. 20 CFR 416.966.

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.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying

articles like docket files, ledgers, and small tools. 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. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the 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. 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

See *Felton v DSS* 161 Mich App 690, 696 (1987). Once the Claimant makes it to the final step of the analysis, the claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 732 F2d 962 (6th Cir, 1984). Moving forward, the burden of proof rests with the State to prove by substantial evidence that the Claimant has the residual function capacity for SGA.

After careful review of the Claimant's medical record and the Administrative Law Judge's personal consideration of the Claimant's testimony at the hearing, this Administrative Law Judge finds that the Claimant's exertional and non-exertional impairments render the Claimant unable to engage in a full range of sedentary work activities 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 record supports a finding that the Claimant does not have the residual functional capacity for SGA. The Department has failed to provide vocational evidence which establishes that, given the Claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which the Claimant could perform

despite the Claimant's limitations. Accordingly, this Administrative Law Judge concludes that the 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 that the Claimant is medically disabled as of May, 2013.

Accordingly, the Department's decision is hereby REVERSED and the Department is ORDERED to initiate a review of the application dated August 6, 2013, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform the Claimant of the determination in writing. A review of this case shall be set for August, 2016.



Susanne E. Harris
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **7/20/2015**

Date Mailed: **7/20/2015**

SEH/sw

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:

