

4. On April 27, 2015, the Department received the AHR's timely written request for hearing (Exhibit A, pp. 4-9).
5. Claimant alleged physical disabling impairment due to diabetes mellitus, neuropathy, diabetic retinopathy, back pain, and chronic artery disease with stent.
6. At the time of hearing, Claimant was 54 years old with a [REDACTED] birth date; he was 5'6" in height and weighed 131 pounds.
7. Claimant completed the 11th grade and received a GED. He can read and write and do basic math.
8. Claimant has an employment history of work as a collision repair person.
9. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

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.

MA-P benefits are available to disabled individuals. BEM 105 (January 2014), p. 1; BEM 260 (July 2014), pp. 1-4. Disability for MA-P purposes is defined as the inability to do any substantial gainful activity (SGA) 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). To meet this standard, a client must satisfy the requirements for eligibility for Supplemental Security Income (SSI) receipt under Title XVI of the Social Security Act. 20 CFR 416.901.

To determine whether an individual is disabled for SSI purposes, the trier-of-fact must apply a five-step sequential evaluation process and consider the following:

- (1) whether the individual is engaged in SGA;
- (2) whether the individual's impairment is severe;

- (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404;
- (4) whether the individual has the residual functional capacity to perform past relevant work; and
- (5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work.

20 CFR 416.920(a)(1) and (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).

In general, the individual has the responsibility to establish a disability 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, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. 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, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

As outlined above, the first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Claimant has not engaged in SGA activity during the period for which assistance might be available. Therefore, Claimant is not ineligible under Step 1 and the analysis continues to Step 2.

Step Two

Under Step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for MA-P means that the impairment is expected to result in

death or has lasted, or is expected to last, for a continuous period of at least 12 months. 20 CFR 416.922.

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 416.920(a)(4)(ii); 20 CFR 416.920(c). 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); see also *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985). Basic work activities means the abilities and aptitudes necessary to do most jobs, including (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the *de minimus* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28. If such a finding is not clearly established by medical evidence or if the effect of an impairment or combination of impairments on the individual's ability to do basic work activities cannot be clearly determined, adjudication must continue through the sequential evaluation process. *Id.*; SSR 96-3p.

In the present case, Claimant alleges physical disabling impairment due to diabetes mellitus, neuropathy, diabetic retinopathy, back pain, and chronic artery disease with stent. The medical evidence presented at the hearing was reviewed and is summarized below.

Claimant was hospitalized for chest pain [REDACTED] (Exhibit A, pp. 141-172). On [REDACTED] he went to the emergency room with chest pain complaints. His condition was found consistent with chronic obstructive pulmonary disease. Because of his elevated sugar levels, he was put on insulin (Exhibit A, pp. 92-104, 117-128).

Claimant returned to the hospital on [REDACTED], complaining of chest pain. A chest x-ray showed no acute process and a thorax CT showed no pulmonary embolism or focal infiltrate or consolidate (Exhibit A, pp. 105-116, 129-140). The medical history shows

that Claimant suffered a heart attack in [REDACTED] and had a stent placed in right coronary artery (Exhibit A, p. 40).

A [REDACTED] eye exam showed CSDME (clinically significant diabetic macular edema) in both eyes and mild non-proliferative diabetic retinopathy and mild cataracts in both eyes (Exhibit A, pp. 22-31, 37-39). On [REDACTED] Claimant was fitted for diabetic foot orthoses in response to diabetic neuropathy, hammer toes and right dropping arch, and left *pes cavus* foot (Exhibit A, p. 32).

Notes from Claimant's primary care physician concerning office visits from [REDACTED], [REDACTED], and from [REDACTED] showed ongoing treatment for diabetes mellitus, which was described as "out of control" at the [REDACTED] visit; neuropathy, with Claimant complaining of bilateral leg pain and numbness in the hands; hypertension; coronary artery disease with chest pain and fatigue; and left extremity edema (Exhibit 1, pp. 1-41, Exhibit A, pp. 40-41, 44, 52-61). Notes from the [REDACTED], office visit showed that Claimant had gone to the [REDACTED] and discovered bleeding in his right eye (Exhibit 1, p. 20). Claimant saw a podiatrist for nail treatment (Exhibit 1, pp. 35-38).

On [REDACTED] Claimant's internal medicine doctor completed a physical exam report, DHS-49, listing Claimant's diagnoses as diabetes mellitus, COPD, and CAD. The doctor noted that Claimant had abnormal monofilament sensation bilateral feet and that his condition was deteriorating due to his diabetes and CAD. The doctor did not identify any limitations because she had not made any assessments at the visit. She indicated that Claimant was capable of meeting his needs in the home (Exhibit A, pp. 25-26).

A [REDACTED] MRI of Claimant's lumbar spine showed (i) a small left foraminal disc protrusion with a focal annular tear at L2-L3 without neural foraminal narrowing, (ii) a tiny left foraminal disc protrusion at L3-L4 resulting in a minimal left neural foraminal narrowing, (iii) a small left foraminal disc protrusion at L4-L5 resulting in minimal narrowing of the left neural foramen, and (iv) mild bulging disc at L5-S1 without central spinal canal or neuroforaminal stenosis (Exhibit A, p. 33).

In a [REDACTED], consultative exam, an endocrinologist found that Claimant had nonproliferative diabetic retinopathy with right macular edema, dyslipidemia, diabetic neuropathy, peripheral vascular disease manifested with intermittent claudication, heart murmur, osteoarthritis of the knees and back. The doctor found that Claimant was "overtly insulin deficient." It was noted that Claimant smoked cigarettes but was trying to quit and used cannabinoids (Exhibit 1, pp. 39-41).

At the [REDACTED] visit, Claimant's internist's review of systems showed increased fatigue and restlessness; blurred vision/visual disturbance; chest pain; polydipsia; burning of extremities and tingling; confusion, dizziness, and falling; agitation and personality changes; neck stiffness; frequent infections; and frequent urination. The doctor noted the [REDACTED] lumbar spine MRI showed small/subtle left foraminal disc

protrusion at L2-L3, L3-L4, and L4-L5 resulting in minimal narrowing of left L3-L4 and L4-L5 neural foramina. Claimant, a heavy tobacco smoker, was advised to quit smoking and was prescribed Wellbutrin (Exhibit 1, p. 14). There were concerns expressed concerning Claimant's overuse of Norco (Exhibit 1, 8, 27).

The file showed references to Claimant's marijuana use and his smoking (Exhibit A, pp. 39-40, 50, 58, 115, 150).

In consideration of the *de minimus* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Claimant suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 12 months. Therefore, Claimant has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination of whether the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on the objective medical evidence presented, Listings 1.02 (major dysfunction of a joint), 1.04 (disorders of the spine), 2.04 (loss of visual efficiency), 4.04 (ischemic heart disease), 4.11 (chronic venous insufficiency), 9.00 (endocrine disorders), and 11.04 (peripheral neuropathies) were considered.

The medical evidence presented does **not** show that Claimant's impairments meet or equal the required level of severity of any of the above-referenced listings to be considered as disabling without further consideration. Because Claimant's impairments are insufficient to meet, or to equal, the severity of a listing, Claimant is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Step 4, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. Impairments, and any related symptoms, may cause physical and mental limitations that affect what a person can do in a work setting. 20 CFR 416.945(a)(1). RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s) and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4). The total limiting effects of all impairments, including those that are not severe, are considered. 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical

examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants 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).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If the limitations and restrictions imposed by the individual's impairment(s) and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). To determine the exertional requirements, or physical demands, of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a).

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.

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. 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. If someone can do light work, ... he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

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, ... he or she can also do sedentary and light work.

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, ... he or she can also do medium, light, and sedentary work.

Very heavy work.

Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, ... he or she can also do heavy, medium, light, and sedentary work.

20 CFR 416.967.

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of nonexertional limitations or restrictions include difficulty functioning 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 (i.e., 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).

In this case, Claimant testified that he experienced shortness of breath, dizziness, shooting pain to his feet, and tightening of his chest. He further testified that his symptoms prevented him from walking more than a half block without resting, he had to alternate between standing and sitting, he could bend and squat only with discomfort, he could lift up to 50 pounds but could not carry it, and he had difficulties holding items. He shared a home with a roommate and could dress and care for himself. He could do most chores but had to limit the amount of chores he did in a single day.

Claimant's medical record from office visits to his internist showed ongoing uncontrolled diabetes and complaints of bilateral leg pain and numbness in the hands (Exhibit 1, pp. 1-41, Exhibit A, pp. 40-41, 44, 52). The [REDACTED] MRI of his lumbar spine showed a small left foraminal disc protrusion with a focal annular tear at L2-L3 without neural foraminal narrowing, a tiny left foraminal disc protrusion at L3-L4 resulting in a minimal left neural foraminal narrowing, and mild bulging disc at L5-S1 (Exhibit A, p. 33). Although Claimant's internist did not assess Claimant's physical limitations, she did indicate that his condition was deteriorating. The evidence supports Claimant's testimony concerning fatigue and pain in his arms and legs.

Ultimately, after review of the entire record to include Claimant's testimony, it is found, based on his impairments, that Claimant maintains the physical capacity to perform sedentary work as defined by 20 CFR 416.967(a).

Claimant's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Claimant's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed within the past 15 years that was SGA and that lasted long enough

for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. 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).

As determined in the RFC analysis above, Claimant is limited to sedentary work activities. Claimant's work history in the 15 years prior to the application consists of work as a collision repair person (heavy, skilled). In light of the entire record and Claimant's RFC, it is found that Claimant is unable to perform past relevant work. Accordingly, Claimant cannot be found disabled, or not disabled, at Step 4 and the assessment continues to Step 5.

Step 5

In Step 5, an assessment of Claimant's RFC 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). If the individual can adjust to other work, then there is no disability. Disability is found if an individual is unable to adjust to other work. *Id.*

At this point in the analysis, the burden shifts from Claimant to the Department to present proof that Claimant has the RFC to obtain and maintain SGA. 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).

When the impairment(s) and related symptoms, such as pain, only affect the ability to perform the exertional aspects of work-related activities, Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, 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, Claimant was 53 years old at the time application and 54 years old at the time of hearing. Thus, he is considered to be closely approaching advanced (age 50-54) for purposes of Appendix 2. He is a GED recipient with a history of skilled work experience as a collision repair man. However, these skills are not transferrable. As discussed above, Claimant maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform sedentary work activities. In consideration of Claimant's age, education, work experience, and exertional RFC, the Medical-Vocational Guidelines, 201.14, lead to the conclusion that Claimant is disabled at Step 5 for purposes of MA-P benefit program.

Notwithstanding the conclusion that the medical evidence shows that Claimant is disabled at Step 5, 42 USC 423(d)(2)(C) of the Social Security Act provides that an individual is not considered disabled if alcoholism or drug addiction is a contributing factor material to the determination that the individual is disabled. Because evidence in the medical record and Claimant's testimony at the hearing showed that he used marijuana, 20 CFR 416.935(a) requires a determination of whether Claimant's drug addiction or alcoholism (DAA) is a contributing factor material to the determination of disability. The key factor in determining whether DAA is a contributing factor material to the determination of disability is whether the client would be disabled if he or she stopped using drugs or alcohol. 20 CFR 416.935(b)(1). This requires consideration of whether the current disability determination would remain if the client stopped using drugs or alcohol. 20 CFR 416.935(b)(2). If the remaining limitations would not be disabling, the DAA is a contributing factor material to the determination of disability. 20 CFR 416.935(b)(2)(i). If the remaining limitations are disabling, the individual is disabled independent of the DAA and, as such, the individual's DAA is not a contributing factor material to the determination of disability. 20 CFR 416.935(b)(2)(ii). The client continues to have the burden of proving disability throughout the DAA materiality analysis. Social Security Ruling (SSR) 13-2p(5)(a).

In this case, there is no evidence that Claimant's marijuana use attributed to his impairments or that he was counseled to stop using marijuana in order to treat his conditions. Therefore, Claimant's marijuana use is not a contributing factor material to the determination that he is disabled.

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Claimant disabled for purposes of the MA-P benefit programs.

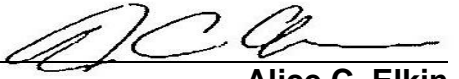
DECISION AND ORDER

Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Process Claimant's MA-P application for retroactive coverage for February 2014 and March 2014 to determine if all the other non-medical criteria are satisfied and notify Claimant of its determination; and

2. Supplement Claimant for lost benefits, if any, that Claimant was entitled to receive if otherwise eligible and qualified.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **7/01/2015**

Date Mailed: **7/01/2015**

ACE / pf

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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]