

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

**IN THE MATTER OF:**

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

MAHS Reg. No.: 15-022809  
Issue No.: 2009  
Agency Case No.: ██████████  
Hearing Date: January 25, 2016  
County: St. Clair

**ADMINISTRATIVE LAW JUDGE: Alice C. Elkin**

**HEARING DECISION**

Following Petitioner'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 January 25, 2016, from Port Huron, Michigan. Petitioner appeared and testified. He was represented by ██████████, representative with ██████████s, Petitioner's authorized hearing representative (AHR). The Department was represented by ██████████ Family Independence Manager.

During the hearing, the AHR waived the time period for the issuance of this decision in order to allow for the submission of additional records. The requested hospitalization documents were received and admitted into evidence as Petitioner's Exhibit 2; the requested medical examination report from Petitioner's primary care physician was not provided. The record closed on February 24, 2016, and the matter is now before the undersigned for a final determination based on the evidence presented.

**ISSUE**

Did the Department properly determine that Petitioner was not disabled for purposes of the Medical Assistance (MA-P) benefit program?

**FINDINGS OF FACT**

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

1. Petitioner began receiving retirement benefits from the Railroad Retirement Board (RRB) in 2005 based on a disability (Exhibit B).
2. In February 2015, Petitioner began receiving Medicare benefits (Exhibit 1).

3. On April 30, 2015, Petitioner submitted an application for public assistance seeking MA-P, with a request for retroactive coverage to January 2015.
4. On September 11, 2015, the Medical Review Team (MRT) found Petitioner not disabled for purposes of MA-P (Exhibit A, pp. 12-51).
5. On September 14, 2015, the Department sent Petitioner a Health Care Coverage Determination Notice denying the application based on MRT's finding of no disability (Exhibit A, pp. 6-8).
6. On December 9, 2015, the Department received the AHR's timely written request for hearing (Exhibit A, pp. 2-5, 10).
7. Petitioner alleged disabling impairment due to coronary artery disease and neuropathy.
8. At the time of hearing, Petitioner was [REDACTED] years old with an [REDACTED], birth date; he was [REDACTED] in height and weighed [REDACTED] pounds.
9. Petitioner is a high school graduate and had some college.
10. Petitioner has an employment history of work as railroad parts inspector and repairman.
11. At the time of application, Petitioner was not employed.
12. Petitioner does not have a pending disability claim with the Social Security Administration.

### **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 (October 2014), p. 1; BEM 260 (July 2014), p. 1. In this case, the AHR argues that Petitioner is disabled for MA-P purposes because he was found disabled by the RRB, based on an April 19, 2006 letter from the RRB to Petitioner, indicating that RRB found him disabled with a September 19, 2005 disability onset date (Exhibit B). The AHR also argued that Petitioner's status as disabled was reinforced by his approval for Medicare beginning February 2015 (Exhibit 1).

Under Department policy, a person who is not deceased meets the definition of disabled for MA-P purposes if the person (i) receives Supplemental Security Income (SSI), (ii) is approved by the Social Security Administration (SSA) for Retirement Survivors and Disability Insurance (RSDI) based on a disability; or (iii) is found disabled by the Medical Review Team (MRT), provided that (a) the client is not eligible for RSDI based on disability or blindness and (b) SSA's determination that the client is not disabled or blind for SSI purposes is **not final**. BEM 260, pp. 1-3, 7; BEM 150 (January 2014), p. 1.

It is acknowledged that the RRB and SSA both use the same definition of total disability. Social Security Bulletin, Vol. 68, no. 2<sup>1</sup>. Further, disability benefits provided by the RRB are designed to take the place of Social Security benefits. *Id.* However, Department policy specifically defines disability for MA-P eligibility to be dependent on a client's eligibility for SSI, eligibility for disability-based RSDI, or an MRT finding of disability. It does not include receipt of RRB benefits, or Medicare benefits, as a basis for establishing disability.

Because Petitioner cannot rely on his receipt of RRB benefits or Medicare to establish that he is disabled for MA-P purposes and there is no evidence he received SSI benefits or RSDI disability-based benefits, in order to be eligible for MA-P Petitioner must satisfy the requirements to be disabled for SSI purposes as defined in Title XVI of the Social Security Act. 20 CFR 416.901. A disability for SSI purposes 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).

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity to perform past relevant work; and (5) 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 in this process, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR

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<sup>1</sup> <https://www.socialsecurity.gov/policy/docs/ssb/v68n2/v68n2p41.html>

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, Petitioner has not engaged in SGA activity during the period for which assistance might be available. Therefore, Petitioner 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). 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. 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).

In the present case, Petitioner alleges disabling impairment due to coronary artery disease and neuropathy. The medical evidence presented at the hearing was reviewed and is summarized below.

Petitioner has a past medical history of myocardial infarction, stent, and coronary artery bypass surgery (Exhibit 2, p. 28).

From January 12, 2015 to January 14, 2015, Petitioner was hospitalized after complaining of chest pain with shortness of breath. His heart rate was 90 beats per minute and blood pressure was 140/90. His past history was significant for coronary artery bypass grafting. A January 12, 2015 chest x-ray showed moderate cardiomegaly but no pulmonary vascular congestion or pneumonia; pacemaker electrodes were seen in the chest x-ray. A January 12, 2015 echocardiogram showed left ventricular systolic function severely impaired with an ejection fraction of 20-25% and was suggestive of myocardial infarction. He was found to be experiencing a non-ST elevated myocardial infarction and underwent a cardiac catheter surgery for placement of a stent. His diagnosis was acute myocardial infarction and coronary artery disease. Petitioner was started on a beta blocker, ACE inhibitor, statin, and antiplatelet therapy in the form of aspirin 81 mg daily with Brilinta. He was released in good condition.

On September 3, 2015, Petitioner was examined by a doctor at the Department's request. The doctor noted that Petitioner reported a history of coronary artery disease since 2002 when he had three-vessel bypass surgery, and a myocardial infarction in January 2015, at which time he had a heart catheterization and stenting. He was on Simvastatin 80 mg a day, baby aspirin once a day, Plavix 75 mg a day, Lisinopril 10 mg, metoprolol 25 mg twice a day, and nitroglycerine as needed. He reported chest pressure with exertion with associated dyspnea. Blood pressure was measured at 132/88 and pulse at 86 and regular. In his physical examination of Petitioner, the doctor noted the following abnormal findings: mild difficulty heel and toe walking, mild difficulty squatting, and mild difficulty standing three seconds on either foot; decreased dorsalis pedis and posterior tibial pulses bilaterally; and diminished sensation from the mid-calf down. All range of motion measurements were within normal limits. The doctor concluded that Petitioner continued to have exertional angina and was undergoing anti-platelet therapy; his blood pressure was borderline but stable that day; and he may have peripheral arterial disease resulting in his diminished pulsations or due to post-surgical bypass. (Exhibit A, pp. 22-26.)

In consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Petitioner suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 12 months. Therefore, Petitioner 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 medical evidence presented in this case, listings 4.04 (ischemic heart disease), 4.12 (peripheral arterial disease), and 11.14 (peripheral neuropathy) were considered. In order to meet a listing under 4.04, the client must be on a regimen of prescribed treatment. The medical record in this case shows that at the time of his January 2015 myocardial infarction, he was not on any medication and had not seen a cardiologist since 2009. Therefore, Petitioner cannot meet a listing under 4.04. A listing under 4.12 requires specific test results to support a disability, which are not present in this case. A listing under 11.14 requires disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements or gait and station. There was insufficient medical evidence to support such a finding in Petitioner's case.

Because the medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration, Petitioner 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. RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s), including those that are not severe, 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); 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 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).

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). The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). 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 and occasionally walking and standing. 20 CFR 416.967(a). 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 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). 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). 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. 20 CFR 416.967(e).

In this case, Petitioner alleges only exertional limitations due to his medical condition. He explained that he experienced pressure on his chest on exertion. He testified that he had no problems sitting but his feet would start to hurt after 20 minutes because of the neuropathy. His ability to stand was also affected by pain in his feet. He could take stairs, but he would get tired after walking only a couple of blocks. He guessed that he could lift 20 pounds but added that he avoided lifting any weight beyond ten to fifteen pounds and the amount he could lift shifted daily. He lived with his wife and daughter. He cared for his own personal hygiene and dressed himself although he had some problems dressing because of his feet. He did some small chores but not consistently. His family did the shopping, yardwork and snow shoveling.

The medical evidence shows that Petitioner had a history of coronary artery disease since 2002 when he had a three-vessel bypass surgery. He was hospitalized for non-ST myocardial infarction in January 2015. At that time his echocardiogram showed a severely impaired left ventricular systolic function ejection fraction of 20-25%, and he underwent stent surgery. The doctor who performed the consultative exam on September 3, 2015 noted that Petitioner had diminished sensation from the mid-calf

down. He concluded that Petitioner continued to have exertional angina and may have peripheral arterial disease. This evidence was sufficient to support Petitioner's limitations in his ability to lift and his ability to stand for long periods. With respect to Petitioner's exertional limitations, it is found based on a review of the entire record that Petitioner maintains the physical capacity to perform sedentary work as defined by 20 CFR 416.967(a).

Petitioner'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 Petitioner'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).

Petitioner's work history in the 15 years prior to the application consists of work as a railroad parts inspector and repairman, a job requiring standing most of the day and lifting 25 to 50 pounds regularly and up to 80 pounds on occasion. Based on this description, Petitioner's prior work is properly classified as heavy, skilled work. Based on the RFC analysis above, Petitioner is limited to no more than sedentary work activities. In light of Petitioner's RFC, it is found that Petitioner is unable to perform past relevant work. Accordingly, Petitioner 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 Petitioner'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 Petitioner to the Department to present proof that Petitioner 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). 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, Petitioner was ■ years old at the time of application and ■ years old at the time of hearing and, thus, considered to be advanced age (age 55 and over) for purposes of Appendix 2. He is a high school graduate. Although his prior employment involved skilled work, those skills involve heavy exertion and are therefore not transferable. As discussed above, Petitioner maintains the RFC to meet the physical demands to perform sedentary work activities on a regular and continuing basis. Based on Petitioner's age, education, work experience, and exertional RFC, the Medical-Vocational Guidelines, 201.06, result in a finding that Petitioner is disabled.

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Petitioner 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 Petitioner's April 30, 2015 MA-P application, with request for retroactive coverage to January 2015, to determine if all the other non-medical criteria are satisfied and notify Petitioner of its determination;
2. Supplement Petitioner for lost benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified;
3. Review Petitioner's continued eligibility in March 2017.



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

Date Signed: **3/4/2016**

Date Mailed: **3/4/2016**

ACE / ttf

**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:

[REDACTED]  
[REDACTED]  
[REDACTED]  
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