

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

IN THE MATTER OF:

[REDACTED]

Reg No.: 2011-44804
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: November 10, 2011
Wayne County DHS (43)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a hearing was held in Detroit, Michigan on Thursday, November 10, 2011. The Claimant appeared, along with [REDACTED], and testified. The Claimant was represented by [REDACTED] appeared on behalf of the Department of Human Services ("Department").

During the hearing, the Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional records. The evidence (school records) were received, reviewed, and forwarded to the State Hearing Review Team ("SHRT") for consideration despite the fact that the Claimant failed to attend the scheduled consultative evaluation ordered by the undersigned. On May 2, 2012, this office received the SHRT determination which found the Claimant not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") and State Disability Assistance ("SDA") 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:

2011-44804/CMM

1. The Claimant submitted applications for public assistance seeking MA-P benefits on September 30, 2010 and October 13, 2010, retroactive to August 2010. (Exhibit 1, pp. 6 – 17)
2. The Claimant also sought SDA benefits on the October 13th application.
3. On October 8, 2010, the Medical Review Team (“MRT”) found the Claimant not disabled based on the September 30th application. (Exhibit 1, pp. 47, 48)
4. On December 27, 2010, the MRT deferred the disability determination based on the October 13th application, requesting additional medical evidence. (Exhibit 1, pp. 20, 21)
5. On April 26, 2011, the MRT found the Claimant not disabled based on the October 13th application.
6. On May 2, 2011, the Department notified the Claimant of the MRT decision. (Exhibit 1, pp. 4 – 6, 18, 19).
7. On July 19, 2011, the Department received the Claimant’s timely written request for hearing. (Exhibit 1, p. 3)
8. On September 2, 2010 and April 26, 2012, the SHRT determined that the Claimant was not disabled. (Exhibit 2)
9. The Claimant alleged physical disabling impairment(s) due to residual complications from an abdominal gunshot wound (“GSW”).
10. The Claimant alleged mental impairment due to bipolar disorder.
11. During the hearing, the Claimant agreed to attend a Psychiatric consultative examination.
12. The Claimant failed to attend the January 6, 2012 consultative evaluation.

CONCLUSIONS OF LAW

The Medical Assistance program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services, formerly known as the Family Independence Agency, pursuant to MCL 400.10 *et seq.* and MCL 400.105. Department policies are found in the Bridges Administrative Manual (“BAM”), the Bridges Eligibility Manual (“BEM”), and the Bridges Reference Tables (“RFT”).

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 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, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In this case, the record was insufficient for a determination of disability. As requested, the Department scheduled two consultative evaluations. The first evaluation was scheduled for December 10, 2011; however, due to transportation issues the Claimant was unable to attend. As a result, the Department rescheduled the examination for January 6, 2012. The Claimant failed to call and/or attend the evaluation. When an individual who is applying for benefits fails to take part in a consultative examination or test necessary to determine disability, the individual may be found not disabled. 20 CFR 416.918(a). In this case, the consultative examination was necessary to determine disability; therefore, the Claimant is found not disabled. Accordingly, the Department's denial is AFFIRMED.

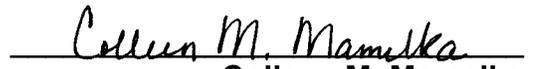
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds the Claimant not disabled for purposes of the Medical Assistance benefit program.

2011-44804/CMM

Accordingly, it is ORDERED:

The Department's determination is AFFIRMED.


Colleen M. Mamelka
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: May 9, 2012

Date Mailed: May 9, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

2011-44804/CMM

CMM/cl

cc:

