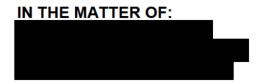
#### STATE OF MICHIGAN

# MICHIGAN ADMINISTRATIVE HEARING SYSTEM ADMINISTRATIVE HEARINGS FOR THE DEPARTMENT OF HUMAN SERVICES



Reg No.: 2012-30902 Issue No.: 2000, 4000

Case No.:

Hearing Date: April 5, 2012 Wayne County DHS (49)

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 telephone hearing was conducted from Detroit, Michigan on Thursday, April 5, 2012. The Claim ant appeared and test ified. The Claim ant was represented by 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 all for the submiss — ion of addi tional medical ev idence. Spec ifically, the Claimant agreed to attend a cons — ultative evaluation. On July — 23, 2012, — this office received notification t hat the Claimant failed — to attend the examination s—cheduled for July 12, 2012. This matter is now before the undersigned for a final decision.

# <u>ISSUE</u>

Whether the Department proper ly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") and St ate Disability Assistance ("SDA") benefit programs?

## FINDINGS OF FACT

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

 The Claimant submitted an application for public assistance seeking SDA and MA-P benefits retroactive to July 2011, on October 11, 2011.

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- 2. On November 14, 2011, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 4, 5)
- 3. The Department notified the Claimant of the MRT determination on December 1, 2011. (Exhibit 1, pp. 1-3)
- 4. On December 7, 2011, the Department received the Cla imant's timely wr itten request for hearing.
- 5. On March 6, 2012, the State Hearing Review Team found the Claimant not disabled. (Exhibit 3)
- 6. During the April 5, 2012 hearing, the Claimant agreed to attend a consultative evaluation.
- 7. On July 23, 2012, notice was received that the Claimant failed to attend the 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 Elig ibility 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 im pairment which can be expected to result in death or which has lasted or can be expect ed to last for a continuous period of not less than 12 months. 20 CF R 416.905(a). The person claiming a physical or mental disability has the burden to esta blish it through the use of competent medical evidence from qualified medical sources such as his or her medical history. clinica l/laboratory findings, diagnosis/prescri bed treatment, prognosis for recovery and/or medical assessment of ability to do work-related ac tivities o r ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 416.913. An individual's subjective pain com plaints ar e not, in and of themselves, sufficient to establish disab ility. 20 CF R 416.908; 2 0 CFR 4 16.929(a). Similarly, conclusor v 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.

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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 a result, a consultative evaluation was scheduled for July 12, 2012. On July 23, 2012, notice was received t hat the Claimant failed to call and/or attend the appointment. When an individual who is applying for be nefits fails to take part in a consultative examination or test necessary to determine dis ability, the individual may be fo und not disabled. 20 CFR 416.918(a). In this case, the consultative examination was necessary to determine disability; therefore, the Clai mant is found not disabled. Accordingly, the Department's denial is AFFIRMED.

# **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant not disabled for purposes of the MA-P and SDA benefit programs.

Accordingly, it is ORDERED:

The Department's determination is AFFIRMED.

Colleen M. Mamelka

Colleen M. Mamelka

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

Date Signed: August 2, 2012

Date Mailed: August 2, 2012

**NOTICE**: Michigan Administrative Hearing Syst em (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a par ty within 30 days of the mailing date of this Dec ision and Order. MAHS will not order a rehearing or reconsideration on the Department's mo tion where the final decis ion 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 ti mely 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 <u>MAY</u> 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

Re

consideration/Rehearing Request

P. O. Box 30639

Lansing, Michigan 48909-07322

#### CMM/cl

CC:

