

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

IN THE MATTER OF:

[REDACTED] OAD
[REDACTED]

New Reg. No.: 201256857
Old Reg. No.: 20126189
Issue No: 2009
Case No: [REDACTED]
Hearing Date: January 10,, 2012
Delta County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

RECONSIDERATION DECISION

This matter is before the undersigned Administrative Law Judge under the authority of MCL 24.287(1) and 1993 AACRS R 400.919 upon the request of the Claimant.

ISSUE

Did the Administrative Law Judge (ALJ) err in his denial of the Claimant's eligibility for Medical Assistance (MA)?

FINDINGS OF FACTS

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

1. On January 10, 2012, a Decision and Order was issued that upheld the Department of Human Services (Department).
2. On June 5, 2012, the Michigan Administrative Hearings System (MAHS) for the Department received the Claimant's request for Rehearing/Reconsideration.
3. On July 23, 2012, the Michigan Administrative Hearings System (MAHS) for the Department granted the Claimant's request for reconsideration and issued a Notice of Reconsideration to the Claimant.
4. Findings of Fact 1 – 26 from the Decision and Order issued January 10, 2012, are incorporated by reference.
5. The objective medical evidence indicates that the Claimant is 64 inches tall and weighed 106 pounds on November 1, 2011, 110 pounds on January 17, 2012, and 104 pounds on January 19, 2012.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The

Department of Human Services (DHS or Department) administers the MA program 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), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Reconsideration is a paper review of the facts, law and any new evidence or legal arguments. It is granted when the original hearing record is adequate for purposes of judicial review and a rehearing is not necessary, but one of the parties believes the ALJ failed to accurately address all the relevant issues raised in the hearing request.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance and State Disability Assistance (SDA) programs. Under SSI, disability is defined as:

...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.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is not disabled.
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is not disabled.
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4.
4. Can the client do the former work that he performed within the last 15 years? If yes, the client is not disabled.
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, client is not disabled.

This Administrative Law Judge correctly found that the Claimant is not disqualified from receiving disability at Step 1, because he was not substantially and gainfully employed at any time relevant to this matter. Therefore, the analysis continues at Step 2. (See p. 6 of the Decision and Order, January 10, 2012.)

This Administrative Law Judge correctly found that the Claimant is not disqualified from receiving disability at Step 2, because he established a severe impairment that meets the disability standards for Medical Assistance (MA) and State Disability Assistance (SDA). Therefore, the analysis continues to Step 3. (See pp. 6-7 of the Decision and Order, January 10, 2012.)

At step three, a determination is made whether the Claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the Claimant'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 404.1509 and 416.909), the Claimant is disabled.

The Claimant's representative argues that the original Decision and Order dated January 10, 2012, contains a misapplication of law and that the Claimant's meets the criteria of an impairment listed in 20 CFR Part 404.

The Claimant's impairments were considered under disability listing 5.08 Weight loss due to any digestive disorder. This listing is met when the objective medical evidence supports a finding of weight loss due to any digestive disorder, including pancreatitis, despite continuing treatment as prescribed, with a Body Mass Index (BMI) of less than 17.50 calculated on at least two evaluations at least 60 days apart within a consecutive 6-month period. BMI is the ratio of weight to the square of height. Calculation and interpretation of the BMI are independent of gender in adults and is calculated using the following formulas:

$$\text{BMI} = \text{Weight in Pounds} / (\text{Height in Inches} \times \text{Height in Inches}) \times 703$$

The Claimant testified that he is 5' 5" tall, which is 64 inches. The Claimant testified on January 10, 2012, that he weighted 101 pounds. The Claimant testified that on December 1, 2011 he weighted 101 pounds. A weight of 101 pounds would corresponds to a BMI value of 17.3 for a person that is 64 inches tall.

However, this testimony is not consistent with the objective medical evidence on record. The objective medical evidence indicates that on November 1, 2011, the Claimant weighed 106 pounds (BMI 18.2). On January 17, 2012, the Claimant weighed 110 pounds (BMI 18.8). On January 19, 2012, the Claimant weighed 104 pounds (BMI 17.8). The objective medical evidence does not support a finding that the Claimant suffers from severe weight loss despite treatment that resulted in a BMI of less than 17.50 for at least 2 evaluations 60 days apart.

The Claimant has the burden of providing the necessary medical evidence to establish that he had a severe physical or mental impairment that met or equaled a listed impairment. In this case, the Claimant failed to provide the objective medial evidence to

establish that he has a severe impairment that meets or equals any listing. Therefore the analysis continues.

This Administrative Law Judge correctly found that the Claimant is not disqualified from receiving disability at Step 4 because he established a severe impairment that prevents him from doing his past relevant work. The Claimant's prior work fits the description of heavy work, and the objective medical evidence supports a finding that the Claimant is capable of performing only light work. Therefore, the analysis continues to Step 5, the last step of the sequential evaluation. (See p. 7 of the Decision and Order, January 10, 2012.)

This Administrative Law Judge correctly found that the Claimant would be disqualified from receiving disability at Step 5 on the basis that Claimant should be able to perform sedentary or light work. (See p. 8 of the Decision and Order, January 10, 2012.)

Medical vocational guidelines have been developed and can be found in 20 CFG, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969. At the time relevant to this matter, the Claimant was 43-years-old, a younger person, under age 50, with a high school education, and a history of semi-skilled work. Based on the objective medical evidence of record Claimant has the residual functional capacity to perform light work, and Medical Assistance (MA) and State Disability Assistance (SDA) was denied using Vocational Rule 20 CFR 202.22 as a guide.

In conclusion, This Administrative Law Judge correctly found that the Claimant did not meet the standard for disability as set forth in the Social Security regulations. Accordingly, the Decision and Order dated January 10, 2012, is upheld.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Claimant is not disabled and that the Claimant is not eligible for Medical Assistance (MA) and State Disability Assistance (SDA) benefits.

IT IS THEREFORE ORDERED that:

The Decision and Order dated January 10, 2012, is **AFFIRMED**.

/s/
Kevin Scully
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: August 23, 2012

Date Mailed: August 23, 2012

NOTICE: Administrative Hearings 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. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 60 days of the filing of the original request.

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.

KS/tb

cc:

