

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

**IN THE MATTER OF:**

[REDACTED]

Reg No.: 2012-71533  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: December 13, 2012  
Wayne County DHS (57)

**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, December 13, 2012. The Claimant appeared and testified. The Claimant was represented by [REDACTED] of [REDACTED], Inc. ("AHR"). Participating on behalf of the Department of Human Services ("Department") was [REDACTED].

**ISSUE**

Whether the Claimant/AHR's written hearing request is timely?

Whether the Department properly determined that the Claimant 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. The Claimant submitted an application for public assistance seeking MA-P benefits, retroactive to May 2011, on August 19, 2011. (Exhibit 1; Exhibit 2, pp. 31 – 53)
2. On January 10, 2012, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 2, pp. 4, 5)
3. On January 18, 2012, the Department notified the Claimant of the MRT determination. (Exhibit 2, p. 1)

2012-71533/CMM

4. In March 2012, the AHR received, via email communication, notice that the Claimant's application was denied.
5. On August 13, 2012, the Department received the Claimant's written request for hearing. (Exhibit 3)
6. On September 27, 2012, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 4)
7. The Claimant alleged physical disabling impairments due to high blood pressure, unstable angina, and sleep apnea.
8. The Claimant has not alleged any mental disabling impairment(s).
9. At the time of hearing, the Claimant was 41 years old with a [REDACTED] birth date; was 5'11" in height; and weighed 300 pounds.
10. The Claimant has the equivalent of a high school education with vocational training with an employment history as a driver and as general laborer.

### **CONCLUSIONS OF LAW**

As a preliminary, two issues need to be address; first, the timeliness of the hearing request and second, the issue of disability. Each will be addressed separately.

#### **Hearing Request**

A notice of case action must specify the action(s) taken by the department; the reason(s) for the action; the specific manual item which cites the legal base for an action of the regulation or law itself; an explanation of the right to request a hearing; and the conditions under which benefits are continued if a hearing is requested. BAM 220 (January 2011), pp. 1, 2. Adequate notice is required for approval/denial of benefits. BAM 220, p. 2. An adequate notice is a written notice sent to the client at the same time an action takes effect (not pended).

In this case, the AHR was informed via an email communication that the Claimant's MA-P application was denied. The Department never sent the AHR a notice of case action containing the requirements of BAM 220 as detailed above. As such, the AHR never received adequate notice of the denial. Accordingly, it is held that the August 13, 2012, request for hearing is timely.

## **Disability Analysis**

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 order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual’s current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(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 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). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). 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). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a). First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1). When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2). Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3). The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d). If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR 416.920a(d)(2). If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity therefore is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(b). 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). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting.

*Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-

2012-71533/CMM

severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, the Claimant alleges disability due to high blood pressure, unstable angina, and sleep apnea.

On May 17 2011, the Claimant was admitted to the hospital with complaints of chest pain. The Claimant was discharged on May 20<sup>th</sup> with the diagnoses of unstable angina without evidence of acute coronary syndrome, accelerated hypertension, left ventricular hypertrophy, suspected dilated cardiomyopathy, systolic congestive heart failure with markedly diminished ejection fraction at 31% without evidence of acute decompensation, morbid obesity, and history of tobacco abuse.

There were no further records presented.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant presented medical evidence establishing that he was hospitalized in May 2011. Since then, there was no further evidence of continuing treatment. Pursuant to 20 CFR 416.909, unless an impairment is expected to result in death, the impairment must be expected to last for a continuous period of at least 12 months to meet the durational requirement. Here, the Claimant's impairment is not expected to result in death, nor was there evidence to establish that the impairment has lasted for a continuous period of at least 12 months. As such, the Claimant is found not disabled at Step 2 with no further analysis required.

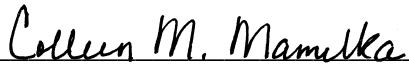
### **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the August 13, 2012, request for hearing is timely. It is further held, that the Claimant is not disabled for purposes of the MA-P benefit program.

Accordingly, it is ORDERED:

1. The August 13, 2012, request for hearing is timely.

2. The Department's MA-P determination is AFFIRMED.

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

Date Signed: January 4, 2013

Date Mailed: January 4, 2013

**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

CMM/tm

cc:

