

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

IN THE MATTER OF:

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████████████████████

Reg No: 201331625
Issue No: 2009, 4031
Case No: ██████████
Hearing Date: June 20, 2013
Hillsdale County DHS-00

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

DECISION AND ORDER

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 held on June 20, 2013. Claimant appeared and testified. The Department was represented by, Elizabeth Welke.

ISSUE

Did the Department properly deny Claimant's Medical Assistance and State Disability Assistance applications?

FINDINGS OF FACT

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

1. Claimant applied for MA-P and SDA on October 8, 2012, with a request for retroactive coverage back to July 2012.
2. The Medical Review Team denied the application on February 20, 2013.
3. Claimant filed a request for hearing on February 28, 2013, regarding the SDA and MA-P denials.
4. A telephone hearing was held on June 20, 2013.
5. On May 14, 2013, the State Hearing Review Team denied the application because the medical evidence, or record, indicates that the Claimant retains the capacity to perform light work.
6. Claimant is 5' 10" tall, and weighs 120.

7. Claimant is 52 years of age.
8. Claimant's impairments have been medically diagnosed as COPD, back pain, and aneurysm.
9. Claimant has the following symptoms: headaches, dizziness, lightheadedness, fatigue, and pain.
10. Claimant completed 11th grade.
11. Claimant is able to read, write, and perform basic math skills.
12. Claimant is not working. Claimant last worked in April 2012, as a landscaper.
13. Claimant lives alone.
14. Claimant testified that he cannot perform some household chores.
15. Claimant takes the following prescribed medications:
 - a. Spiriva
 - b. Advair
16. Claimant testified to the following physical limitations:
 - a. Sitting: 15 minutes
 - b. Standing: 15 minutes
 - c. Walking: 100 feet
 - d. Bend/stoop: no difficulty
 - e. Lifting: 25-30 lbs.
 - f. Grip/grasp: no limitations
17. In a Medical Needs form dated June 17, 2013, Claimant's treating physician answered the question, "Can patient work at usual occupation", with, "No", and wrote, "TBD @ follow up 4-6 weeks after surgery".
18. The Medical Needs form also estimated that 2 months of treatment would be required.
19. Claimant was scheduled for craniotomy on June 24, 2013.
20. A consultative physical examination report dated December 17, 2012, stated the following under conclusions: "1. Emphysema: Clinically he does appear to have moderate air trapping. He did not appear overly dyspneic. There are no findings of heart failure or cyanosis. Tobacco cessation would be indicated as well as continued inhaler use. 2. Arthropathy: He did have tenderness over the sacroiliac

joints and did have some mild thoracic kyphosis. He may have an element of underlying osteoporotic disease and facet arthropathy. Neurologically he did appear stable. He is still able to do orthopedic maneuvers and his gait is normal. At this point anti-inflammatories and continuance of activity would be indicated.”

21. PFT testing performed as part of the consultative physical examination showed FEV1 level of 1.33 before bronchodilator, and 1.46 after FVC level of 3.11 before bronchodilator, and 3.85 after.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The Medical Assistance (MA-P) 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 administers the MA-P 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) and the Program Reference Manual (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The 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 Program Eligibility Manual (BEM) and the Bridges Reference Manual (PRM).

The Department conforms to state statute in administering the SDA program. 2000 PA 294, Sec. 604, of the statute states:

- (1) The department shall operate a state disability assistance program. Except as provided in subsection

- (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:
 - (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.

- (b) A person with a physical or mental impairment which meets federal supplemental security income disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

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 MA-P program. Under SSI, 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.

Federal regulations require that the department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

...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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, the Claimant is not working, therefore, the Claimant is not disqualified at this step in the evaluation.

The second step to be determined in considering whether the Claimant is considered disabled is whether the severity of the impairment. In order to qualify the impairment must be considered severe which is defined as an impairment which significantly limits an individual’s physical or mental ability to perform basic work activities. Examples of these include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, 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. 20 CFR 416.921(b).

In the third step of the analysis, the trier of fact must determine if the Claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Claimant's medical record does not support a finding that the Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR Part 404, Part A. Listings 1.04 and 3.02 were considered.

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 clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged. 20 CFR 416.913. A conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient, without supporting medical evidence, to establish disability. 20 CFR 416.927.

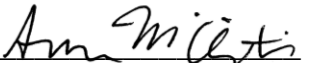
The fourth step of the analysis to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the Claimant from doing past relevant work. In the present case, the Claimant's past employment was as a landscaper. Working as a landscaper as described by Claimant at hearing would be considered light work. The Claimant's impairments would not prevent him from doing past relevant work. Claimant's testimony regarding his limitations and ability to sit, stand, walk, lift and carry was not supported by substantial medical evidence.

Therefore, Claimant is found to be NOT disabled. Claimant's appeal could have been denied on durational grounds also as his condition is expected to improve within 1 year of application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is NOT medically disabled for the purposes of MA and SDA eligibility.

Accordingly, the Department's decision is hereby **AFFIRMED**.



Aaron McClintic
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 07/12/2013

Date Mailed: 07/15/2013

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 affect the substantial rights of the claimant,
 - failure of the ALJ to address other relevant issues in the hearing decision.

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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

AM/pw

cc:

[REDACTED]