

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

IN THE MATTER OF:

██████████
██████████████████
██████████████████

Reg No: 201324298
Issue No: 2009
Case No: ██████████
Hearing Date: April 24, 2013
County: Monroe

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 Hearing. After due notice, an in person hearing was held on April 24, 2013. Claimant appeared and testified. Claimant's Authorized Hearings Representative, ██████████ ██████████ ██████████ ██████████, also appeared. The Department of Human Services' (Department) was represented by, Marcia Close.

ISSUE

Did the Department properly deny Claimant's Medical Assistance application?

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 on November 20, 2012, with a request for retroactive coverage back to August 2012.
2. The Medical Review Team denied the application on January 3, 2013.
3. Claimant was notified of the denial on January, 2013.
4. Claimant filed a request for hearing on January 22, 2013, regarding the MA denial.
5. An in person hearing was held on April 24, 2013.
6. On March 21, 2012, the State Hearing Review Team denied the application because the medical evidence of record indicates that the

Claimant despite his impairments retains the capacity to perform light exertional tasks.

7. Claimant is 5' 11" tall, and weighs 184 pounds, having lost 26 pounds in the last year.
8. Claimant is 52 years of age.
9. Claimant's impairments have been medically diagnosed as diabetes, depression, vision problems, osteomyelitis, hypertension, and hyperlipidemia.
10. Claimant has the following symptoms: dizziness, lightheadedness, pain, and fatigue.
11. Claimant completed 9th grade and nurse assistant training.
12. Claimant is able to read, write, and perform basic math skills.
13. Claimant is not working. Claimant last worked in 2006 as a nurse assistant.
14. Claimant is living with friends.
15. Claimant testified that he cannot perform some household chores.
16. Claimant is supposed to take the following prescribed medications:
 - a. Metformin
 - b. Novolog
 - c. Glipizide
17. Claimant testified to the following physical limitations:
 - i. Sitting: 15 minutes
 - ii. Standing: 15 minutes
 - iii. Walking: ½ block
 - iv. Bend/stoop: difficulty
 - v. Lifting: 25 lbs.
 - vi. Grip/grasp: no limitations
18. Following hearing updated records were gathered and forwarded to the State Hearing Review. Claimant agreed to this and waived timeliness standards.

19. On July 15, 2013 the State Hearing Review Team again denied Claimant's appeal because the medical evidence of record indicates that the Claimant retains the capacity to perform light exertional tasks.
20. Claimant testified to experiencing pain at a high level of 9-10 on an everyday basis with some pain always present at a low level of 6-7.
21. A consultative physical examination report dated April 6, 2013, states the following under EXTREMITIES/MUSCULOSKELETAL: "He has amputated big right toe. There is well defined tender mass above the left Achilles tendon. No edema or varicosities. The patient had good handgrip bilaterally. Digital dexterity is intact. The patient managed to get on and off the examination table without difficulty. The patient's gait is limping and he wears a boot on the right foot. He claims that this is an air cast boot. He had difficulty with tandem, tiptoe and heel walking without the boot. The patient is able to bend and stoop. The patient is able to squat 70%. Range of motion of the shoulders is decreased. Range of motion of the right ankle is decreased. The patient complained of pain with all movements he was asked to perform."

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).

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 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 this case, the Claimant’s medical evidence of record supports a finding that Claimant has significant physical and mental limitations upon Claimant’s ability to perform basic

work activities such as: walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling. Medical evidence has clearly established that the Claimant has an impairment (or combination of impairments) that has more than a minimal effect on the Claimant's work activities. See Social Security Rulings: 85-28, 88-13, and 82-63.

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 9.00 was 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 nurse assistant. Working as a nurse assistant as described by Claimant at hearing would be considered medium work. The Claimant's impairments would prevent him from doing past relevant work. This Administrative Law Judge will continue through step 5.

In the final step of the analysis, the trier of fact must determine if the Claimant's impairment(s) prevent the Claimant from doing other work...20 CFR 416.920(f). This determination is based upon the Claimant's:

1. Residual, functional, capacity defined simply as "what can you still do despite your limitations? 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and
3. the kinds of work which exist, in significant numbers, in the national economy, which the claimant could perform despite her limitations. 20 CFR 416.966.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in

the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium, and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.

Sedentary work: Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting, or carrying, articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking, and standing, is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally, and other sedentary criteria are met... 20 CFR 416.967(a).

Light work: Light work involves lifting no more than 20 pounds at a time with frequent lifting, or carrying, of objects weighing up to 10 pounds. Even though the weight lifted may be very little; a job is in this category when it requires a good deal of walking, or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Medium work: Medium work involves lifting no more than 50 pounds at a time with frequent lifting, or carrying, of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work...20 CFR 416.967(c).

Heavy work: Heavy work involves lifting no more than 100 pounds at a time with frequent lifting, or carrying, of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work...20 CFR 416.967(d).

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once the Claimant makes it to the final step of the analysis, the Claimant has already established a prima facie case of disability. *Richardson v Secretary of Health and Human Services*, 732 Fd2 962 (6th Cir, 1984). Moving forward the burden of proof rests with the state to prove by substantial evidence that the Claimant has the residual function capacity for substantial gainful activity.

After careful review of claimant's extensive medical record and the Administrative Law Judge's personal interaction with claimant at the hearing, this Administrative Law Judge finds that claimant's exertional and non-exertional impairments render claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P, Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The department has failed to provide vocational evidence which establishes that claimant has the residual functional capacity for substantial gainful activity and that, given claimant's age, education, and

work experience, there are significant numbers of jobs in the national economy which the claimant could perform despite claimant's limitations.

Accordingly, this Administrative Law Judge concludes that claimant is disabled for purposes of the MA-P program as of August 2012. Claimant's testimony regarding his limitations and ability to sit, stand, walk, lift and carry is credible and supported by substantial medical evidence.

Therefore, Claimant is found to be disabled.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of August 2012.

Accordingly, the Department's decision is hereby **REVERSED** and the Department is ORDERED to:

1. Initiate a review of the application for MA and Retro MA dated November 20, 2012, if not done previously, to determine Claimant's non-medical eligibility.
2. The Department shall inform Claimant of the determination in writing. A review of this case shall be set for August 2014.



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

Date Signed: 08/09/2013

Date Mailed: 08/09/2013

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.

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; or
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant; or
 - 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

AM/pw

cc: [REDACTED]
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