

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-42875
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: September 11, 2013
County: Jackson

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, an in-person hearing was held on September 11, 2013, at the Jackson County DHS office. Participants on behalf of Claimant included [REDACTED] of [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Family Independence Manager [REDACTED] and Eligibility Specialist [REDACTED].

ISSUE

Did the Department of Human Services (DHS) properly deny Claimant's Medical Assistance (MA-P), Retro-MA and State Disability Assistance (SDA) 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) On September 20, 2012, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
- (2) On January 25, 2013, the Medical Review Team (MRT) denied Claimant's application for MA-P/Retro-MA indicating Claimant was capable of other work. SDA was denied due to lack of duration. (Depart Ex. #A, pp 96-97).
- (3) On January 31, 2013, the department caseworker sent Claimant notice that his application for MA/Retro-MA and SDA had been denied. (Depart Ex. #A, pp 101-105).
- (4) On April 25, 2013, the department caseworker mailed out the Notice denying Claimant's application for MA/Retro-MA and SDA to Claimant's authorized representative. (Depart Ex. #A, pp 101-106).

- (5) On April 19, 2013, Claimant filed a request for a hearing to contest the department's negative action.
- (6) On July 11, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform medium work. SDA was denied for lack of duration. (Depart Ex. B, pp 1-2).
- (7) Claimant is a 22 year old man whose birthday is March 15, 1991. Claimant is 5'11" tall and weighs 165 lbs. Claimant completed the eighth grade.
- (8) Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.
- (9) Claimant has never worked.
- (10) Claimant does not have an alcohol/nicotine/drug abuse problem or history.
- (11) Claimant does not have a driver's license due to his seizures.
- (12) Claimant alleges disability on the basis of epilepsy, seizures and hypertension.
- (13) In November, 2012, Claimant arrived at the emergency department on a stretcher. Claimant has a history of epilepsy and presented with a seizure that lasted 2-3 minutes. His sister reported that his first seizure was at 14 years old and that he has been having more seizures as he gets older. She stated that the seizures have been getting worse lately. She stated that Claimant is biting his tongue more often during his seizures and is also convulsing a lot more. She stated that Claimant has about 2 seizures a month and will have multiple seizures in one day when he has a seizure. Claimant also has hypertension. Claimant was postictal when first evaluated. Repeat neurologic examination after completion of his diagnostic evaluation showed him to be awake with no focal deficits. His CBC, his metabolic panel and Tegretol level were all reasonably physiologic. The Tegretol level was 7.5 which was therapeutic for Claimant who was also taking Keppra. Claimant was discharged home with a diagnosis of a breakthrough seizure. (Dept. Ex# A, pp 37-40).
- (14) In May, 2013, Claimant ran out of his medications and was admitted to the hospital with recurrent seizures. His seizure episodes started with a blank episode followed by stiffening and generalized tonic-clonic activity with loss of consciousness and postictal state with severe agitation. He was administered IV Keppra and restarted on his oral medications. He was discharged in stable condition the following day with a diagnosis of seizures in the setting of history of epilepsy due to discontinuation of medications and leukocytosis, likely demargination. He was also discontinued on his blood pressure medication. (Dept. Ex# A, pp 44-45).

- (15) In October, 2013, Claimant underwent a mental status examination by the [REDACTED] [REDACTED] [REDACTED]. Claimant stated that he started having seizures at the age of 14 years old. He reported that the seizures are happening about 4 or 5 times a week and last anywhere from a few minutes to an hour, although most are 10-15 minutes long. Claimant stated that his medications make him drowsy and although he is taking them consistently, he is still having seizures. Claimant's verbal presentation was often vague and poorly organized. He appeared to have trouble recalling details of events and frequently referred to his sister for help. This included school and family related materials and not just the frequency and duration of seizures. He appeared depressed throughout the examination. He described problems with sleep, motivation, lethargy, feelings of hopelessness and helplessness. Diagnosis: Axis I: Major Depressive Disorder; Alcohol abuse by history; Cannabis abuse by history; Axis II: No diagnosis; Axis II I: Epilepsy, partial with impairment of consciousness; Hypertension; Axis IV: Severe in relation to primary support group, social environment and occupation; Axis V: Current GAF=43. Prognosis is poor. The psychologist indicated Claimant would not be able to manage his own benefit funds. The psychologist indicated that Claimant has the cognitive ability to do simple repetitive tasks, though he would likely struggle with multi-step tasks or tasks that took significant time to learn. He would likely struggle with dealing with supervisors or co-workers as his depression make him prone to believing that others are critical of him. He additionally is highly sensitive to how others would view his seizures. His depression is such that it could also interfere with his ability to maintain a consistent work schedule. (Dept. Ex# C, pp 3-7).

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) and the Bridges Reference Manual (RFT).

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 Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (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 exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI 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.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

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.

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 to make appropriate mental adjustments, if a mental disability is being 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 and 20 CFR 416.929. By the same token, 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 416.929.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c). If the impairment, or combination of impairments, do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment. 20 CFR 416.929(a).

Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv). Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

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 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 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 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 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).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
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 ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
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. If yes, MA is approved. 20 CFR 416.290(d).

4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
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, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

Based on Finding of Fact #12-#15 above this Administrative Law Judge answers:

Step 1: No.

Step 2: Yes.

Step 3: Yes. Claimant has shown, by clear and convincing documentary evidence and credible testimony, his physical impairments meet or equal Listing 11.04(B):

11.02 *Epilepsy - convulsive epilepsy, (grand mal or psychomotor), documented by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once a month, in spite of at least 3 months of prescribed treatment.* With:

- A. Daytime episodes (loss of consciousness and convulsive seizures) or
- B. Nocturnal episodes manifesting residuals which interfere significantly with activity during the day.

Claimant testified that he is currently having continuous seizures 2 to 3 times a week and even has breakthrough seizures when taking his medications. He stated that since November, 2012, the seizures have become more frequent and last longer, and he was hospitalized in May, 2013, for recurrent seizures.

Had Claimant not met Listing level 11.02, Claimant would have been found disabled under 12.04, based on the psychological evaluation completed by the Disability Determination Service. Claimant's current GAF is a 43, which means he is presenting with serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g., no friends, unable to keep a job, cannot work).

Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA/Retro-MA and SDA programs. Consequently, the department's denial of his September 20, 2012, MA/Retro-MA and SDA application cannot be upheld.

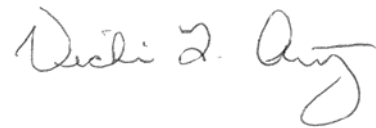
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining Claimant is not currently disabled for MA/Retro-MA and SDA eligibility purposes.

Accordingly, the department's decision is **REVERSED**, and it is ORDERED that:

1. The department shall process Claimant's September 20, 2012, MA/Retro-MA and SDA application, and shall award him all the benefits he may be entitled to receive, as long as he meets the remaining financial and non-financial eligibility factors.
2. The department shall review Claimant's medical condition for improvement in November, 2014, unless his Social Security Administration disability status is approved by that time.
3. The department shall obtain updated medical evidence from Claimant's treating physicians, physical therapists, pain clinic notes, etc. regarding his continued treatment, progress and prognosis at review.

It is SO ORDERED.



Vicki L. Armstrong
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: November 7, 2013

Date Mailed: November 7, 2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

VLA/las

cc:

