

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2013-49692  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: November 13, 2013  
County: Genesee-02

**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 November 13, 2013, at the Genesee County Department of Human Services (Department) office. Claimant, represented by [REDACTED] of [REDACTED] and accompanied by his mother, appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED] [REDACTED]

**ISSUE**

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P) and Retro-MA and benefits?

**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 December 4, 2012, Claimant applied for MA-P/Retro-MA.
- (2) On February 8, 2013, the Medical Review Team (MRT) denied Claimant's MA/Retro-MA application for lack of duration. (Depart Ex. A, pp 60-61).
- (3) On February 15, 2013, the department caseworker sent Claimant notice that his application was denied.
- (4) On April 18, 2013, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On May 16, 2013, Claimant was granted State Disability Assistance (SDA) in reference to a subsequent application, retroactive to March 12, 2012 through August, 2013.

- (6) On June 25, 2013, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA indicating Claimant's condition is improving/is expected to improve within 12 months from the date of onset or from the date of surgery. SHRT also noted that *"[w]hile this injury is of a severe nature that will significantly limit the claimant's ability to perform even daily activities, not to mention gainful employment, the medical evidence of record does not indicate that the claimant's condition will not continue to improve/be expected to improve within 12 months from the date of onset or from the date of surgery."* (Depart Ex. B).
- (7) Claimant alleges disability based on a gunshot wound to the abdomen resulting in abscess of abdominal cavity, wound dehiscence, pseudomonas infection wound, liver abscess, colostomy, ventral hernia, hypovolemia, traumatic pneumothorax and hemothorax bilaterally, liver laceration, acute blood loss anemia, hemorrhage due to trauma, acidosis, electrolyte abnormality, acute respiratory failure following trauma and surgery, acute hyperkalemia, acute kidney injury, thrombocytopenia due to massive blood transfusion, laceration of stomach, laceration of transverse colon, acute renal failure with tubular necrosis, hypotension, oliguria, hypernatremia, abdominal compartment syndrome, failure to thrive in adult and dehydration.
- (8) On [REDACTED], Claimant was admitted to the hospital for a gunshot wound resulting in traumatic pneumothorax and hemothorax bilaterally, liver laceration, stomach injury, laceration of stomach, laceration of transverse colon, abdominal compartment syndrome and acute kidney injury. He arrived in severe hemorrhagic shock and underwent damage control laparotomy, embolization of the liver, repair of stomach, transverse colon resection with colostomy and Hartman's pouch. He developed renal failure and required a short course of hemodialysis. He was eventually able to ambulate with a walker and discharged on [REDACTED]. On [REDACTED] Claimant's physician sent him to the emergency department where he was diagnosed and admitted for dehydration and failure to thrive in an adult. He was discharged on [REDACTED] with a diagnosis of a liver abscess and failure to thrive. He had six emergency department visits and hospitalizations. Then on [REDACTED] Claimant was admitted to the hospital for a colostomy reversal and abdominal wall reconstruction. During the surgery he required a blood transfusion. He was discharged on [REDACTED] with small skin dehiscence at umbilicus as well as a former colostomy site with two JP drains present. On [REDACTED], Claimant was sent to the emergency department by his physician and was diagnosed with an abscess of the abdominal cavity with wound dehiscence and a liver abscess. Claimant was admitted to the hospital and his drains were removed and the cavity was repacked. At the hearing, Claimant credibly testified he had an appointment with the surgeon next week to discuss replacing the colostomy bag due to continuing complications. Claimant continues to walk with a cane, and the toes on the right side of his feet have curled under causing him to walk on

the top of his toes. He ambulates with an awkward gait, dragging the right side of his body around, while painfully putting weight on the right foot. As a result, he is in constant pain walking, standing or sitting.

- (9) Claimant is a 23 year old man whose birthday is [REDACTED] Claimant is 5'8" tall and weighs 145 lbs. Claimant completed high school equivalent degree and last worked in 2009.
- (10) Claimant was appealing the denial for Social Security disability at the time of the hearing.

### **CONCLUSIONS OF LAW**

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) 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 Reference Tables Manual (RFT).

Under the Medicaid (MA) program:

"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.

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 limitations in light of the objective medical evidence presented. 20 CFR 416.929(c)(94).

In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence. 20 CFR 416.929(a). Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone. 20 CFR 416.945(e).

In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs

and laboratory findings and statements about how your symptoms affect you. We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work. 20 CFR 416.929(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 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).

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 #6-#10 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 inability to ambulate effectively meets or equals Listing 1.02:

**1.02 Major dysfunction of a joint(s) (due to any cause) :**  
Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With inability to ambulate effectively which means an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities.

Claimant is unable to ambulate effectively and is not expected to be able to ambulate effectively for at least 12 months. Accordingly, the department erred in denying his application for Medicaid.

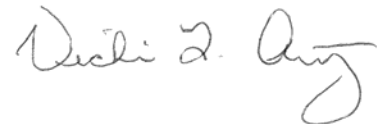
**DECISION AND ORDER**

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 eligibility purposes.

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

1. The department shall process Claimant's December 4, 2012, MA/Retro-MA 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.



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

Date Signed: November 14, 2013

Date Mailed: November 14, 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:

