

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

IN THE MATTER OF:

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

Reg No.: 2012-48725
Issue No.: 2000
Case No.: ██████████
Hearing Date: September 25, 2013
Wayne County DHS (82)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 25, 2013, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. The Claimant was represented by ██████████
████████████████████ Participants on behalf of the Department of Human Services (Department) included ██████████, ES.

During the hearing, the Claimant waived the time period for the issuance of this decision for the submission of additional medical evidence. Additional records included various medical/treatment and a consultative evaluation. Despite the Department twice scheduling a consultative medical examination as ordered by Interim Order, the Claimant did not attend. The Department advised that the Claimant and his Authorized Hearing Representative were notified by mail and phone (Claimant) and fax and email (AHR) On October 30, 2013, this office received notification that the Claimant failed to attend the consultative evaluation scheduled for October 29, 2013 at 1:00p.m. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefit programs?

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 December 2012 on January 14, 2013.
2. On March 25, 2013, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp.1 A)
3. The Department notified the Claimant of the MRT determination on March 28, 2013.
4. On May 10, 2013, the Department received the Claimant's timely written request for hearing.
5. On December 9, 2013, the State Hearing Review Team found the Claimant not disabled. (Exhibit 2)
6. During the September 25, 2013 hearing, the Claimant agreed to attend a consultative examination and an Interim Order was issued ordering the Department to schedule the examination.
7. A DHS 49 was received, but no consultative exam was received because the Claimant did not attend the consultative exam. The matter was sent to the State Hearing Review Team before this office received the notification that Claimant did not attend the exam.
8. The State Hearing Review team issued a Decision on December 9, 2013 finding the Claimant not disabled.
9. On October 30, 2013, notice was received from the Department that the Claimant failed to attend the evaluation.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family

Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The 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 BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

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.

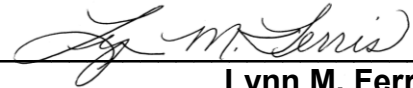
In this case, the record was insufficient for a determination of disability. As a result, the record was extended to allow for the submission of additional medical records as well as a consultative evaluation. Although further records were received, the Claimant failed to attend the Consultative Examination. On October 30, 2013 this office was notified that the Claimant failed to attend the consultative evaluation scheduled for October 29, 2013 at 1:00 p.m. When an individual who is applying for benefits fails to take part in a consultative examination or test necessary to determine disability, the individual may be found not disabled. 20 CFR 416.918(a). In this case, the consultative examination was necessary to determine disability; therefore, the Claimant is found not disabled. Accordingly, the Department's denial is AFFIRMED.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant not disabled for purposes of the MA-P and SDA benefit programs.

Accordingly, it is ORDERED:

The Department's determination is AFFIRMED.



Lynn M. Ferris
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: January 3, 2014

Date Mailed: January 3, 2014

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.

2013-48725/LMF

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

LMF/cl

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]