

**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.: 2013-51247
Issue No.: 2009, 4009
Case No.: ██████████
Hearing Date: October 3, 2013
County: Ogemaw-00

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

HEARING DECISION

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, upon the Claimant's request for a hearing. After due notice, a telephone hearing was held on October 3, 2013, from Lansing, Michigan. Participants on behalf of the Claimant included the Claimant. Claimant's Attorney, ██████████, from ██████████ ██████████ ██████████ also appeared for the Claimant. Participants on behalf of the Department included Teri Stahl. Assistant Attorney General Brian McLaughlin also appeared for the Department.

ISSUE

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

FINDINGS OF FACT

1. Claimant applied for MA-P and SDA on February 11, 2013.
2. The Medical Review Team denied the application on May 15, 2013.
3. Claimant filed a request for hearing on May 31, 2013, regarding the MA and SDA denials.
4. A telephone hearing was held on October 3, 2013.
5. On July 31, 2013, the State Hearing Review Team denied the application because the medical evidence of record indicates that the Claimant retains the capacity to perform a wide range of light, unskilled work.

6. Claimant is 5' 6" tall and weighs 325 pounds.
7. Claimant is 35 years of age.
8. Claimant's impairments have been medically diagnosed as COPD, gout, joint and back pain, anxiety, learning disability and depression.
9. Claimant has the following symptoms: pain, fatigue, insomnia, memory and concentration problems, racing thoughts, social isolation and shortness of breath.
10. Claimant completed 9th grade.
11. Claimant is not able to read, write, and perform basic math skills.
12. Claimant is not working. Claimant last worked in July 2005 as a roofer.
13. Claimant lives with his mother
14. Claimant testified that he cannot perform some household chores.
15. Claimant takes the following prescribed medications:
 - a. Visteril
 - b. Lexapro
 - c. Ambien
 - d. Naproxen
 - e. Tessalon
 - f. Zylprim
16. Claimant testified to the following physical limitations:
 - i. Sitting: 15-20 minutes
 - ii. Standing: 5-10 minutes
 - iii. Walking: 4-5 feet
 - iv. Bend/stoop: some difficulty
 - v. Lifting: 8 lbs.
 - vi. Grip/grasp: no limitations
17. In a consultative psychological examination report dated April 24, 2013, Claimant was found to have a GAF score of 40 with diagnosis of social anxiety disorder (severe), panic disorder with agoraphobia and major depression, single episode, severe. Claimant's prognosis was found to be guarded.
18. Claimant needs help dressing and sometimes uses a wheel chair.

19. Updated records were submitted at hearing and were forward on to the State Hearing Review Team. Claimant agreed to this and waived timeliness standards.
20. The State Hearing Review Team again denied Claimant's appeal on December 3, 2013, because Claimant retains the capacity to perform light work.
21. In March 2013, Claimant's treating psychiatrist found Claimant to have a GAF score of 41 with diagnosis of panic disorder with agoraphobia.
22. An MRI of Claimant's Lumbar Spine dated July 9, 2013, showed the following under impression: "1. Circumferential disk bulge with superimposed left foraminal disk protrusion with an annular tear. There is bilateral recess and bilateral neural foraminal narrowing greater on the left than the right. Correlate clinically for left L4 radiculopathy. The disk protrusion at the L4-L5 level is in close proximity to the left L4 nerve root. 2. At the L5-S1 level, there is a circumferential disk bulge with superimposed right paracentral protrusion causing right lateral recess narrowing and right neural foraminal narrowing."

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 is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

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 a 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 this case, this Administrative Law Judge finds that Claimant may be considered presently disabled at the third step. Claimant meets listing 12.06 or its equivalent. The testimony of Claimant's treating therapist supports this position. This Administrative Law Judge will not continue through the remaining steps of the assessment. Claimant's testimony and the medical documentation support the finding that Claimant meets the requirements of the listing. Claimant has other significant health problems that were not fully addressed in this decision because Claimant is found to meet a listing for a different impairment.

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 February 2013.

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

1. Initiate a review of the application for SDA and MA dated February 11, 2013, 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 December 2014.



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

Date Signed: 12/19/2013

Date Mailed: 12/19/2013

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

AM/pw

cc: [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
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