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

IN THE MATTER OF:



Reg. No.: 2013-63670 Issue No.: 2009; 4009

Case No.: Hearing Date:

December 18, 2013

County: Kalamazoo

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

Following Claimant's r equest for a hearing, this matter is before the undersigned Administrative Law J udge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 t o 431.250; and 45 CF R 205.10. After due notice, a telephon e hearing was held on December 18, 2013, from Lansing, Michi gan. Participa nts on behalf of Claimant included Claimant and his interpreter Department of Human Services (Department) included Eligibility Specialist.

<u>ISSUE</u>

Did the Department of Human Services (the Department) proper ly deny Claimant's application for Medical Assistance (MA-P), retroactive Medical Assistance (retro MA-P) and State Disability Assistance (SDA)?

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 February 12, 2013, Claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- On July 11, 2013, t he Medic al Revi ew Team denied Clai mant's applic ation stating that Claimant coul d perform other work pursuant to medical vocational rule 203.14.
- 3. On July 16, 2013, the Department case worker sent Claimant notice that his application was denied.
- 4. On August 8, 2013, Claimant filed a request for a hearing to contest the Department's negative action.

- 5. On October 3, 2013, the State Hearing Review Team again denied Claimant's application.
- 6. Claimant is a 58-year-old man whose birth date is tall and weighs 164 pounds. Claimant is a high school graduate. Claimant is able to read, write and does have basic math skills.
- 7. Claimant last worked in 2011 at a medical supply store stocking shelves.
- 8. Claimant alleges as disabling impairments: hearing loss and hypertension.

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 oppor tunity for a hearing shall be granted to an ap plicant 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 State Disability A ssistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Service s (DHS or Department) administers the SDA program pursuant to MCL 400.10, et seq., and MAC R 400.3151-400.3180. Department polic ies are found in the Bridges Administrative Manual (BAM), the Bridges Elig ibility Manual (BEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is estab lished by Title XIX of the Social Sec urity Act and is implemented by Title 42 of the C ode of Federal Regulations (CFR). The Department of Human Servic es (DHS or Department) adm inisters 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 Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substant ial 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 set order is used to deter mine disability. Current work activity, severity of impairments, residual functional capacity, past wor k, 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 experienc e. 20 CFR 416.920(c).

If the impairment or combination of impair ments do not signific antly limit physica I or mental ability to do basic work activities, it is not a severe impairment(s) and disab ility does not exist. Age, education and work ex perience will not be c onsidered. 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 (suc h 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 with out 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).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other a cceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an indiv idual can do des pite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

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

A statement by a medical source finding that an individual is "doisabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

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

- 1. Does the client perf orm S ubstantial 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 CF R 416.920(c).

- 3. Does the impairment appear on a spec ial listing of impairments or are the cli ent's symptoms, signs, and laboratory findings at least eq uivalent in s everity to the set of medical findings specified for the listed impairment? If no, the analys is 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 f or MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, Claimant is not engaged in subst antial gainful activity and has not worked since **2011**. Claimant is not disqualified from receiving disability at Step 1.

The subjective evidence on the record indicates that Claimant testified that he lives with his wife in an apartment and he has no childre n under 18. He has no income and no benefits from the Department of human services. He does have a driver's license but no car and gets rides from relatives. Claimant 's wife cooks for him and friends grocery shop for him. He does some basic cleaning. He reads as a hobby. He can stand for 8 to 10 hours, sit for 4 to 5 hours and walk 3 to 4 m iles. Claimant is able to squat, bend at the waist, shower, dress himself, tie shoes and touch his toes. He has no pain. His hands, arms, legs and feet are fine. His knee s and back are also fine. He can carry 20 pounds. Claimant alleges that his only impairments are 70% hearing loss, hypertension and hold his ear.

The objective medical evidence on the record indicates an audiometric testing revealed his average hearing t hresholds sensitivity at air conducti on was 70 in the one ear and 77 in the other ear, page 27. A physical exam ination dated May 10, 2013 showed the Claimant could hear conversati onal speech at 2 feet without limitation. His eardrums reveal scarring bilaterally. His speech was normal. He walked with a normal gait. His blood pressure was 115/75 and 114/70. His ex amination was otherwise unremarkable, page 8. He reported hypertension but his blood pressure was well-controlled and there was no evidence of end organ damage. The Claimant reported hearing loss. Hearing test revealed his average hearing thresholds sensitivity was 70 dB in the right ear and 77 dB and left ear which does not meet severity of 90 dB or greater.

At Step 2. Claimant has the burden of proof of establis hing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that Claimant suffers a severely restrictive physical or mental impairment. in multiple areas of his Claimant has reports of pain body; however, there are no corresponding clinic al findings that suppor t the reports of symptoms and limitations made by the Claimant. There are no labor atory or x-ray findings listed in the file. The clinical impression is that Claimant is stable. There is no medical finding that Claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, Claimant has restricted himself from tasks associated with occupational functioning based upon his reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that Claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insu fficient to establish that Claimant has a severely restrictive physical impairment.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/ps ychiatric e vidence in the record indicating Claimant suffers severe ment al limitations. There is no mental residual functiona I capacity assessment in the record. There is in sufficient evidence contained in the file of depression or a cognitive dysfunction that is so sever e that it would prevent Claimant from working at any job. Claimant was or iented to time, person and place during the hearing. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. The evidentiar y record is insufficient to find that Claimant suffers a severely restrictive mental impair ment. For these reasons, this Administrative Law Judge finds that Claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If Claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of Claima nt's condition does not give ris e to a finding that he would meet a statutory listing in the code of federal regulations.

If Claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon hi s ability to perform his past relevant work. There is no evidence upon which this Admin istrative Law Judge could base a finding that Claimant is unable to perform work in which he has engaged in, in the past. Therefore, if Claimant had not already been denied at Step 2, he would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not Claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

At Step 5, the burden of proof shifts to the Department to establish that Claimant does not have residual functional capacity.

The residual functional capac ity is what an individual can do desp ite 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 class ify 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 t han 10 pounds at a time and occasionally lifting or carrying articles lik e 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 wor k 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 categor y 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).

Claimant has submitted insufficient objecti ve medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do light or sedentary tasks if demanded of him. Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments. Claimant ha s failed to provide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent him from performing any level of work for a period of 12 mont hs. The Claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

There is insufficient objective medical/ps—ychiatric evidence contained in—the file of depression or a cognitive dysfun—ction that is so sever—e that it would prevent Claimant from working at any job. Claimant was able—to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and plac e during the hearing. Claimant's complaints of pain, while profound and credible, are out of proportion to the objective—medical evidence contained in the file as it relates to

Claimant's ability to perform wo rk. Therefore, this Administrative Law Judge finds that the objective medical evidence on the rec ord does not establish that Claimant has no residual functional capacity. Clai mant is dis qualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with his impairments. **Under the Medical-Vocational guidelines, an individual (age 58), with a high school education and an unskilled work h istory who is limited t o light, medium or sedentary w ork is not considered disabled pursuant to medical vocational rule 203.14**.

The Department's Program Elig ibility Manual contains the following policy statements and instructions for casework ers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disable diperson or age 65 or older. BEM, Item 261, p. 1. Because the Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that Claimant is unable to work for a per iod exceeding 90 days, the Claimant does not meet the disability criteria for State Disability Assistance benefits either

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that Claim ant was not eligible to receive Medical Assistance and/or State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusion sof law, decides that the Department has appropriately established on the record that it was acting in compliance with Department policy when it denied Claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The Claimant should be able to perform a wide range of light or sedentary work even with his impairments. The Department has established its case by a preponderance of the evidence.

Accordingly, the Department's decision is AFFIRMED.

Landis

Y. Lain

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

Date Signed: December 20, 2013

Date Mailed: December 26, 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 Re hearing 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 re quest of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsiderati on 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 e vidence that exi sted 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 wr ong conclusion;
- Typographical, mathematical or oth er obvious error in the hearing decision that aff ects the rights of the client;
- Failure of the ALJ to address in the hearing decision r elevant issu es 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

LYL/tb

cc: