

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-22312
Issue No.: 4031
Case No.: [REDACTED]
Hearing Date: April 24, 2013
County: Newaygo

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon Claimant's request for a hearing made pursuant to Michigan Compiled Laws 400.9 and 400.37, which govern the administrative hearing and appeal process. After due notice, a telephone hearing was commenced on April 24, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED] [REDACTED] and Lead Eligibility Specialist [REDACTED] [REDACTED].

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On July 9, 2013, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for the State Disability Assistance (SDA) program?

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 March 27, 2012, Claimant applied for SDA benefits.
- (2) On September 26, 2012, the Medical Review Team (MRT) denied Claimant's MA/Retro-MA application indicating SDA was denied due to lack of duration. (Depart Ex. A, pp 1-2).
- (3) On January 9, 2013, the department case worker sent Claimant notice that his application was denied.

- (4) On January 14, 2013, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On February 26, 2013, the State Hearing Review Team (SHRT) upheld the denial because the nature and severity of Claimant's impairments would not preclude work activity for 90 days. (Depart Ex. B).
- (6) Claimant has a history of epilepsy, seizure disorder, hypertension and gastroesophageal reflux disease (GERD) and alcoholism.
- (7) On August 27, 2012, Claimant's treating physician completed a Medical Examination Report. Claimant was diagnosed with a seizure disorder, hypertension and GERD. Based on the exam, Claimant's treating physician opined that Claimant's condition was deteriorating because of the increase in seizures. The physician explained the type of seizure is childhood absent epilepsy. The context of the seizures includes a family history of seizures. (Dept. Ex. A, pp 4-5).
- (8) On November 15, 2012, Claimant was brought by ambulance to the emergency department (ED) after having a seizure while standing at a counter and hitting the left side of his face on the metal countertop. He had abrasions above and below his left eye. A CT scan of the head showed mild chronic sinusitis and no acute intracranial process. A CT of the cervical spine revealed extensive disc disease in the lower cervical spine but no evidence of an acute cervical abnormality. Claimant was alert and oriented until he seized in the ED at which point he was postictal but then did return to baseline alert and oriented with some fatigue. Claimant left the ED against medical advice and was advised to follow up with his primary care physician and a neurologist. Claimant opts not to take any seizure medications despite his history of seizures. Per Claimant's wife and family, the seizure medications have not worked in the past so he does not take them. (Dept. Ex. A, pp 148-163).
- (9) On November 19, 2012, Claimant was transported by ambulance to the emergency department. According to Claimant's wife and per the EMS report, Claimant has not been able to take medications due to financial issues. According to EMS reports, Claimant had 5 seizures prior to arrival. He was incontinent of urine. His altered mental state precluded a complete history and physical exam based on the grand-mal seizure witnessed by the attending physician. Claimant had dried blood around his mouth and a small superficial laceration of the tongue from dental trauma. When seizing his extraocular muscles were deviated to the left lower visual field. He was able to move all extremities after the seizure activity is over and he was somewhat agitated and clearly postictal. Complete workup including toxicology studies and CT head, as well as all labs and urinalysis were within normal limits. (Dept Ex. A, pp 164-177).

- (10) On January 22, 2013, Claimant was brought in by ambulance to the emergency department after 4-5 seizures. According to EMS he had grand mal seizures. Claimant was very confused afterwards and sleepy. He ran out of seizure medication 5 days ago. He had a seizure in the ED while waiting for the attending physician. Claimant was very sleepy. He did have a slight abrasion on the left side of his tongue. He appeared to be slightly postictal and sleepy. He was discharged and instructed to follow up with his primary care physician. (Dept Ex. A, pp 178-193).
- (11) On February 1, 2013, Claimant's wife brought Claimant into the emergency department after he had had 9 seizures the last 3 days. His wife had been giving him medication on a regular basis. Claimant was diagnosed with petit mal seizures in childhood. His first grand mal seizure was at age 17. His seizure disorder was worsened with his alcohol use and alcoholism. Claimant was unable to identify acts of the day and could not remember when he last took his medication. He did have a headache and did have an abrasion on the right side of his head from a fall. He had some soreness of his tongue where he had some trauma from biting his tongue during the seizures. He stated that he was hearing voices but was unable to tell the physician what they were saying. According to his wife, Claimant has not slept in two nights. On examination, he was alert and oriented but inappropriate. He was agitated but cooperative. He moved all around and would not sit still. He was easily distracted and was difficult to keep on task. He lost his train of thought. He had a large abrasion over the right eye and some scratches on his neck. He had some abrasions and bite marks on the right and left side of his tongue and a broken front tooth. Initial drug screen showed cannabis and barbiturates. He was assessed with acute delusional state, acute encephalopathy, drug induced versus anoxic, seizure disorder, hypertension and left maxillary sinusitis. He was admitted for seizure precautions. Claimant was discharged on February 3, 2013 with a diagnosis of epilepsy with breakthrough seizures versus alcohol withdrawal seizures, alcoholism and alcohol withdrawal syndrome, encephalopathy secondary to EtOH withdrawal and maxillary sinusitis. (Dept Ex. A, pp 225-260).
- (12) Claimant does not have a driver's license and does not drive due to his seizure disorder.
- (13) Claimant is a 42 year old man whose birthday is [REDACTED]. Claimant is 5'10" tall and weighs 230 lbs. Claimant completed high school and last worked in 1997.
- (14) Claimant was appealing the denial of Social Security disability at the time of the hearing.
- (15) Per the Department, Claimant died on [REDACTED].

CONCLUSIONS OF LAW

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. [SDA = 90 day duration].

[As Judge] We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled. 20 CFR 416.927(e).

The medical records show that as early as 2010, Claimant was having witnessed breakthrough seizures with a therapeutic Depakote level.

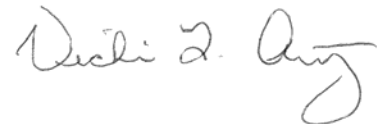
The credible testimony and medical records submitted at hearing verify Claimant was legally disabled for ninety (90) days. Moreover, his treating physician opined that Claimant's condition was deteriorating due to the increase in seizure activity as documented in this medical file. Because Claimant's treating physician's opinion is well supported by medically acceptable clinical and laboratory diagnostic techniques, it has controlling weight. 20 CFR 404.1527(d)(2). As such, the department's denial of SDA pursuant to Claimant's March 27, 2012 SDA application cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department erred in determining that Claimant was not disabled by SDA eligibility standards.

Accordingly, the department's decision is **REVERSED**, and this case is returned to the local office to determine whether Claimant meets all the other financial and non-financial eligibility factors necessary to qualify for SDA.

It is SO ORDERED.



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

Date Signed: July 29, 2013

Date Mailed: July 30, 2013

NOTICE: Administrative Hearings 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. Administrative Hearings 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.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

VLA/las

cc:

