

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

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Reg. No.: 2013-37430
Issue No.: 2009
Case No.: ██████████
Hearing Date: August 6, 2013
County: Marquette-00

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a telephone hearing was held on August 6, 2013 from Lansing, Michigan. Claimant appeared and testified. The Department was represented by Kerry Sherbinow.

ISSUE

Did the Department properly deny Claimant's Medical Assistance application?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent material, and substantial evidence on the whole record, finds as material fact:

1. Claimant applied for MA-P on July 3, 2012.
2. The Medical Review Team denied the application on March 5, 2013.
3. Claimant filed a request for hearing on March 18, 2013, regarding the MA denial.
4. A telephone hearing was held on August 6, 2013.
5. On June 13, 2013, the State Hearing Review Team determined that Claimant retains the capacity to perform light work.
6. Claimant is 5' 5" tall and weighs 220 pounds, having gained 40 pounds in the last year.
7. Claimant is 43 years of age.

8. Claimant's impairments have been medically diagnosed as, back problems, degenerative disc disease, spondylosis, depression, and PTSD.
9. Claimant has the following symptoms: pain, fatigue, numbness in extremities, insomnia, and memory and concentration problems.
10. Claimant completed a 4 year college degree.
11. Claimant is able to read, write, and perform basic math skills.
12. Claimant is not working. Claimant last worked part time at goodwill. Claimant last worked full time as a lab assistant.
13. Claimant lives alone.
14. Claimant testified that she cannot perform household chores.
15. Claimant takes the following prescribed medications:
 - a. Neurontin
 - b. Seroquel
 - c. Visteril
 - d. Effexor
 - e. Synthroid
 - f. Coumadin
 - g. Pravastatin
 - h. Trazodone
16. Claimant testified to experiencing pain at a high level of 5 on an everyday basis with some pain always present at a low level of 3.
17. Claimant testified to the following physical limitations:
 - i. Sitting: 45 minutes
 - ii. Standing: 20-30 minutes
 - iii. Walking: 1-2 blocks
 - iv. Bend/stoop: some difficulty
 - v. Lifting: 5-10 pounds
 - vi. Grip/grasp: no limitations
18. In a consultative physical examination report dated January 6, 2011, the examining physician stated the following under CONCLUSIONS: "1. Spondylosis, degenerative disc disease. This results in her having mild limitations with pain controlled with Hydroxyzine. She does not use an assist device. She has no weakness. She has decreased range of motion to her lumbar spine."

19. In a psychological evaluation dated March 24, 2011, Claimant was found to have a GAF score of 55 with diagnoses of major depression, recurrent, moderate eating disorder, and anxiety disorder.

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).

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 at 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 the third step of the analysis, the trier of fact must determine if the Claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Claimant's medical record does not support a finding that the Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR Part 404, Part A. Listings 1.04 and 12.04 were considered.

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 clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a 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. 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 416.927.

The fourth step of the analysis to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the Claimant from doing past relevant work. In the present case, the Claimant's past employment was as a lab assistant. Working as a lab assistant as described by Claimant at hearing would be considered light work. The Claimant's impairments would not prevent her from doing past relevant work. Therefore her appeal is denied at step 4.

Claimant's testimony regarding her limitations and ability to sit, stand, walk, lift, and carry are not supported by substantial evidence. Claimant failed to present sufficient evidence that she has a psychological impairment that is substantially limiting.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is not medically disabled for the purposes of MA-P eligibility.

Accordingly, the Department's decision is hereby **AFFIRMED**.



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

Date Signed: 08/27/2013

Date Mailed: 08/28/2013

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 60 days of the filing of the original request.

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 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

AM/pw

cc: [REDACTED]
[REDACTED]
[REDACTED]
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