

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

IN THE MATTER OF:

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

Reg. No.: 2013-37970
Issue No.: 2009, 4009
Case No.: ██████████
Hearing Date: September 11, 2013
County: Wayne (82-18)

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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, a telephone hearing was held on September 11, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████

The record was extended to allow additional relevant medical evidence to be submitted. Claimant waived timeliness. The additional medical evidence was received and submitted to the State Hearing Review Team (SHRT) for review prior to this decision being issued.

ISSUE

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

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 September 18, 2012, Claimant applied for MA-P and SDA.
2. On December 13, 2012, the Medical Review Team denied Claimant's request.
3. On March 26, 2013, Claimant submitted to the Department a request for hearing.

4. SHRT denied Claimant's request.
5. Claimant is 45 years old.
6. Claimant completed education through the 10th grade.
7. Claimant has employment experience (last worked 2005) as a hi-lo driver (required sitting 3 hours, standing/walking 5 hours and required lifting 20 pounds), as a chauffeur (required sitting 90% of the time, standing/walking 10% of the time and lifting up to 70 pounds).
8. Claimant's limitations have lasted for 12 months or more.
9. Claimant suffers from severe spinal stenosis, sleep apnea and congestive heart failure.
10. Claimant has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.
11. Claimant is 5'4" tall and weighs 269pounds which yields a Body Mass Index (BMI) of 46.2.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (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.

The Department conforms to State statute in administering the SDA program.

2000 PA 294, Sec. 604, of the statute states:

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 exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal supplemental security income 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.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. 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.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are 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.

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

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

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, Appendix 1, 12.00(C).

Claimant testified to the following symptoms and abilities: can barely walk, from the waist down he has no feeling, not able to walk far, problems with falling, swollen legs, lower back hurts, struggles with breathing, legs and feet are swollen and are reddish/purple, struggles with showering himself, struggles with household chores, poor sleep, sleeps in a chair at times, can sit 25 minutes before pain increases, no medical restriction on lifting, no issue with grip and grasp, not able to wear conventional shoes, limited ability to bend and squat, gets help with grocery shopping and is able to drive.

Claimant's treating cardiologist indicated on a heart classification form [REDACTED] that Claimant had a heart classification of III and a therapeutic classification of C. This would indicate Claimant has a significant restriction on his abilities. Specifically, his ordinary activities are moderately restricted.

Claimant had an MRI which revealed a multilevel discogenic and degenerative change with severe spinal canal stenosis at the L4-L5. This MRI was performed [REDACTED]

Social Security Ruling 02-01 directs adjudicators to consider that the combined effects of obesity with other impairments may be greater than the non-obesity impairment alone. The National Institute of Health Clinical Guidelines for Obesity defined three levels of obesity. Level I Body Mass Index (BMIs) of 30.0-34.9; Level II BMIs of 35.0-39.9; and Level III extreme obesity is considered over 40.0. Obesity at Level III represents a condition which creates the greatest risk for developing obesity-related impairments. Claimant's weight was 269 pounds and he is 5'4" in height. Claimant's obesity as measured by his BMI may be calculated using the Center for Disease Control and Prevention Body Mass Index calculation found at: http://cdc.gov/nccdphp/dnpa/bmi/adult_BMI/english_bmi_calculator/bmi_calculator.htm.

The formula for calculating BMI is as follows: calculate BMI by dividing weight in pounds by height in inches squared and multiplying by a conversion factor of 703. This formula, as applied to Claimant's height and weight, yields a BMI of 46.2 or Level III obesity. This level of obesity surely impacts Claimant's spinal stenosis, sleep apnea and congestive heart failure.

Social Security Ruling SSR-02 provides in pertinent part:

Because there is no listing for obesity, we will find that an individual with obesity "meets" the requirements of a listing if

he or she has another impairment that, by itself, meets the requirements of a listing. We will also find that a listing is met if there is an impairment that, in combination with obesity, meets the requirements of a listing. For example, obesity may increase the severity of coexisting or related impairments to the extent that the combination of impairments meets the requirements of a listing. This is especially true of musculoskeletal, respiratory, and cardiovascular impairments. It may also be true for other coexisting or related impairments, including mental disorders.

In this case, this Administrative Law Judge finds that Claimant may be considered presently disabled at the third step. Claimant appears to meet listing 1.04C or its equivalent. 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 a listing.

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 September 2012.

Accordingly, the Department's decision is hereby REVERSED and the Department is ORDERED to initiate a review of the application dated September 18, 2012, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. A review of this case shall be set for June 2015.



Jonathan W. Owens
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 15, 2014

Date Mailed: May 15, 2014

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides or has its principal place of business in the State, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

JWO/pf

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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