

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2013-49991
Issue No.: 2009
Case No.: ██████████
Hearing Date: November 20, 2013
County: Wayne (31)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 November 20, 2013 in Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████ FIM, and ██████████, ES.

ISSUE

Whether the Department properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) 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 20, 2012 the Claimant applied for MA-P.
2. On May 19, 2013, the Medical Review Team denied Claimant's request.
3. The Department issued a Notice of Case Action dated (unknown) denying the Claimant's MA-P application. Exhibit 1
4. On May 20, 2013 Claimant submitted to the Department a timely hearing request.

5. On July 31, 2013 the State Hearing Review Team (SHRT) found the Claimant not disabled and denied Claimant's request.
6. At the hearing the Claimant provided new medical evidence which evidence was sent to SHRT on November 21, 2013.
7. On February 4, 2014 the SHRT found the Claimant not disabled.
8. At the time of the hearing Claimant was [REDACTED] years of age with a birth date of [REDACTED]. The Claimant is now [REDACTED].
9. Claimant completed the 12th grade.
10. Claimant has employment experience doing janitorial work for the [REDACTED].
11. Claimant alleges physical impairments due to diabetes mellitus with neuropathy in both feet, weakness, with numbness and tingling left leg, foot, and weakness in left hand (dominant) due to CVA in [REDACTED] and motor dysfunction.
12. The Claimant alleges mental disabling impairments due to depression and anxiety with diagnosis of mood disorder with anxiety and depression.
13. Claimant's limitations have lasted for 12 months or more.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

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).

The residual functional capacity is what an individual can do despite 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 classify 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.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of regulations if it

significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the Claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the Claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the Claimant's residual functional capacity. 20 CFR 404.1520(e). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, the trier must consider all of the Claimant's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the Claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the Claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the Claimant has the residual functional capacity to do his/her past relevant work, then the Claimant is not disabled. If the Claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Here, Claimant has satisfied requirements as set forth in steps one, two and three of the sequential evaluation. The Claimant at the hearing testified that he is not currently engaging in substantial gainful activity and is not employed; thus, is not disqualified at Step 1. The Claimant's medical evidence referenced below also satisfies the requirement of severity of his impairment thus satisfying Step 2 of the required analysis.

Claimant alleges physical impairments due to diabetes mellitus with neuropathy in both feet, weakness, with numbness and tingling left leg, arm and weakness in left hand (dominant) due to CVA in [REDACTED] and motor dysfunction.

The Claimant alleges mental disabling impairments including mood disorder with depression and anxiety.

A summary of the medical evidence presented follows.

The Claimant currently receives outpatient treatment for his mental impairments since his stroke CVA in [REDACTED]. The Claimant attends therapy two times a month and attends anger management group 4 times per month. The claimant also has medication reviews twice monthly with his psychiatrist. The Claimant has been diagnosed with a mood disorder with depression and anxiety. The Claimant's GAF scores have gone down from 58 to 55 in [REDACTED] to current score of 50. The Claimant's medical records presented as evidence demonstrate ongoing difficulties with impulse control, anger, outburst and inability to be around others, as well as isolative behaviors.

The Claimant's treating psychiatrist completed a Mental Residual Functional Capacity Assessment (MRFCA) evaluation on [REDACTED] which indicated the highest GAF for the year was 55. The psychiatrist notes that the patient has a problem with impulsivity and managing frustration tolerance. The doctor started Depakote and has also prescribed Wellbutrin for mood with noted side effects of drowsiness and nausea. Clinical findings used to support results of mental status examination were present with irritability, low frustration tolerance, inappropriate affect, thoughts of worthlessness, forgetful, poor concentration. The report notes that patient is alert and oriented X 3 but notes cooperative as possible. Prognosis was rated as poor.

As part of the evaluation of the Claimant's signs and symptoms, the report noted, decreased energy, thoughts of suicide (passive), feelings of guilt or worthlessness, impairment in impulse control, mood disturbance, difficulty thinking or concentrating, persistent disturbances of mood or affect, change in personality, paranoid thinking or inappropriate suspiciousness, psychological or behavioral abnormalities associated with a dysfunction of the brain with a specific organic factor judged to be etiologically related to the abnormal mental state and loss of previously acquired functional abilities, memory impairment – short intermediate or long term, sleep disturbance, pathologically inappropriate suspiciousness or hostility and emotional lability. The Claimant was seriously impaired in ability to carry out very short and simple instructions, and ability to ask simple questions or request assistance. Claimant was unable to meet competitive standards in ability to remember work-like procedures, understand and remember very short and simple instructions, work in coordination with or proximity to others without being unduly distracted, make simple work-related decisions, respond appropriately to work routine setting, be aware of normal hazards and take appropriate precautions. The Claimant was evaluated under the category no useful ability to function in the following abilities: ability to maintain attention for two hour segment, sustain an ordinary routine without special supervision, complete a normal workday and work week without interruptions for psychologically based symptoms, perform at a persistent pace without an unreasonable number and length of rest periods, accept instructions and respond appropriately to criticism from supervisors, get along with co-workers or peers without

unduly distracting them or exhibiting behavioral extremes and deal with normal workday stress.

As regards mental abilities the Claimant was rated as unable to meet competitive standards for ability to understand or remember detailed instructions and carry out detailed instructions, set realistic goals or make plans independently of others, and interact appropriately with general public, maintain socially appropriate behavior, travel in unfamiliar places and use public transportation.

Notes to the assessment indicated that easily agitated and has poor impulse control, limited friction tolerance, and has memory problems. He becomes irritable over inappropriate benign action. This impulsivity led to a removal of a gun from his home. Short term memory is impaired. His wife manages finances and takes him to appointments as he is unable to do these things. Since the CVA patient is easily agitated by others and has paranoid feelings and suspicions of a person's motive and easily engages in altercations with neighbors and family members. The treating psychiatrist indicated that the Claimant would be absent due to his impairment more than four days per month. The doctor also indicated that Claimant could not manage his finances.

The MRCA found the Claimant markedly limited in all four categories, Adaption, Social Interaction, Sustained Concentration and Persistence and Understanding and Memory. More specifically the Claimant was markedly limited in his ability to make judgments of simple work-related decisions, understand and remember complex instructions, carry out complex instructions, ability to make judgments on complex work-related decisions, interact appropriately with the public, and respond appropriately to usual work situations and to changes in a routine work setting. The only moderate impairments were in ability to interact with supervisors or co-workers, carry out simple one or two step instructions, and ability to respond to dangers in the workplace.

Progress note [REDACTED] found Claimant with sleep problems, with high level of irritability and impulsiveness and distrust and suspicion.

On September 17, 2013 the Claimant was taken off Depakote due to missing appointments which may be due to memory impairment or depressive or anxiety symptoms. Insight and judgment was fair and GAF was 50. Assessment noted Claimant unable to work any more. On [REDACTED], notes indicate that Claimant was kicked out of the house again but is now back in house. He is aware that he cannot control his temper. The mental status exam noted fair eye contact but looking at ground at times. Speech clear and coherent, mood is ok, affect is dysthymic, frustrated, with fair insight and judgment. GAF was 50.

On [REDACTED] the Claimant reported continuing difficulties with his wife. The Claimant appeared worried, some decreased depression and anxiety with low frustration tolerance with potential for aggression. Patient placed on Depakote. A suggestion made that Claimant consider some increased physical outlet, but not

walking in neighborhood where his is likely to get into an argument with someone. On [REDACTED] the Claimant reported improvement and more stable with Depakote, and he has not fought with his wife in 2 months.

On [REDACTED] Claimant reported going to garage when he senses an overreaction or anger in situation. On [REDACTED] in session with Claimant's wife, a plan was discussed so the Claimant's wife could leave their home for 2 hours or more at a time as concern that Claimant not leave home on his own. In [REDACTED] Claimant reported extreme problems with sleep.

In [REDACTED] Claimant reported an incident in the doctor's office, where Claimant lost control requiring staff of office to intervene and control the situation. The status notes that Claimant has continuing difficulties, a poor impulse control and irritability that put him at risk in public situation.

On [REDACTED] the Claimant was evaluated with memory deficits, worry, and withdrawal and was depressed and anxious. The Claimant has problems dealing with having too many people around or someone who shows up without warning. A mental status exam on [REDACTED] found Claimant's relationship with his wife has been significantly impaired and he is not able to work any more. He missed some appointments which may be secondary to memory impairment from depressive or anxiety symptoms or from his CVA.

In [REDACTED] a progress note indicates disorganization confusion and memory deficits following his stroke with behavior of worry, aggression and withdrawal.

In [REDACTED], Claimant presented with significant feelings of depression and presented with poor impulse control attributed to medical conditions. Claimant reported being put out of home by his wife due to yelling at kids. Claimant expressed suicidal thoughts, was mildly paranoid and GAF was 50.

Progress note [REDACTED]. Notes report aggressiveness since stroke. No psychosis, manic or anxiety attacks. Claimant was calm, cooperative and pleasant. Thought process more logical and goal directed. The assessment also noted feelings of worthlessness and embarrassment over his disability, problems with sleep, crying spells low self-esteem, guilt since stroke in [REDACTED] GAF was 55-58, diagnosis was mood disorder secondary to cerebrovascular accident. Claimant willing to do group therapy. Another progress note on [REDACTED] noted that Claimant reported snapping at people impulsively. A [REDACTED] progress noted that Claimant displayed verbal aggression during his session and desire to return to way he used to be before his stroke. Expressed concern with diabetic neuropathy. On [REDACTED] [REDACTED] the Claimant was reported to have increased insight with fair judgment. Assessed as safe for outpatient treatment.

Listing 12.04 Affective Disorders, A 1. Depressive Syndrome and B was reviewed in conjunction with the medical evidence presented. The Claimant reported a 3 year long history of mental illness since [REDACTED] which has worsened since his CVA which affected his brain and impulse control. The Claimant has treated consistently and was medication compliant throughout his treatment. The Claimant's medical evaluations by his treating psychiatrist documented marked limitations sufficient to meet the listing requirements. The Claimant also testified to his problems with memory and concentration, daily crying spells, with repeated anxiety when around people with limited contact with family members only. All of this elicited testimony was deemed credible. In addition deference was given to the treating source opinion of the Claimant's psychiatrist. Thus it is determined that the medical evidence presented supports the finding that the Claimant meets the requirements of Listing 12.04 1 (A) and (B) and thus is determined disabled at Step 3 with no further analysis required.

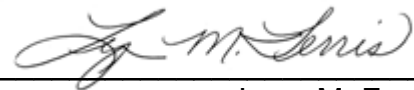
DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled not disabled for purposes of the MA-P and/or SDA benefit program.

Accordingly, the Department's determination is AFFIRMED REVERSED.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department is ORDERED to initiate a review of the application dated March 20, 2012, and any applicable retro application, if not done previously, to determine Claimant's non-medical eligibility.
2. A review of this case shall be set for March 2015.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 6, 2014

Date Mailed: March 6, 2014

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

LMF/cl

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