

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201366416
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: January 22, 2014
County: Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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 January 22, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], [REDACTED] and [REDACTED], [REDACTED] as representative of and interpreter for the Claimant. Participants on behalf of the Department of Human Services (Department) included [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.

ISSUE

Did the Department of Human Services (Department) properly determine that the Claimant did not meet the disability standard for Medical Assistance (MA-P) based on disability?

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 May 17, 2013, the Claimant submitted an application for Medical Assistance (MA) benefits alleging disability.
2. On August 19, 2013, the Medical Review Team (MRT) determined that the Claimant did not meet the disability standard for Medical Assistance (MA-P) because it determined that she is engaged in substantial gainful activity.
3. On August 23, 2013, the Department sent the Claimant notice that it had denied the application for assistance.
4. On August 28, 2013, the Department received the Claimant's hearing request, protesting the denial of disability benefits.

5. On October 14, 2013, the State Hearing Review Team (SHRT) upheld the Medical Review Team's (MRT) denial of Medical Assistance (MA-P) benefits.
6. On May 1, 2014, after reviewing the additional medical records, the State Hearing Review Team (SHRT) again upheld the determination of the Medical Review Team (MRT) that the Claimant does not meet the disability standard.
7. The Claimant is a 59-year-old woman whose birth date is [REDACTED].
8. Claimant is 5' 0" tall and weighs 97 pounds.
9. The Claimant attended school through the 7th grade.
10. The Claimant was not engaged in substantial gainful activity at any time relevant to this matter.
11. The Claimant has past relevant work experience laundering linens where she was required to assist her husband with the washing, drying, and folding of sheets and towels.
12. The Claimant's disability claim is based on impaired vision.

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, Rule 400.901 - 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because her claim for assistance has been denied. Mich Admin Code, R 400.903. 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. Department of Human Services Bridges Administrative Manual (BAM) 600 (July 1, 2013), pp 1-44.

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 the Medical Assistance programs. Under SSI, disability is defined as:

...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.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order.

STEP 1

Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is not disabled.

At step 1, a determination is made on whether the Claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, she is not disabled regardless of how severe her physical or mental impairments are and regardless of her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

The Claimant testified that she has not been employed for four months is not currently engaged in substantial gainful activity. The evidence on the record, including the Claimant's testimony and the information she reported along with her application for assistance, indicates that the Claimant employed on a job where she was required to wash, dry, and fold sheets and towels. The Claimant testified that she was working with her husband.

The Claimant was working at the time of her application for assistance and the Medical Review Team (MRT) found that she was not disabled because it determined that she was engaged in substantial gainful activity as defined in the federal regulations.

If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

This Administrative Law Judge finds that the application of the federal regulations to the Claimant's circumstances by the Medical Review Team (MRT) to be incorrect. The Claimant claim of disability is based on impaired vision and she claims to be statutorily blind.

There is no requirement that you be unable to work in order for us to find that you are blind. However, if you are working, your earnings will be considered under the income and resources rules in subparts K and L of this part. This means that if your income or resources exceed the limitations, you will not be eligible for benefits, even though you are blind. 20 CFR 416.984

When the Claimant submitted her application for benefits she reported to the Department that was receiving a salary for working 6 hours per week. The evidence does not support a finding that based on her earnings that she is presumptively engaged in substantial gainful activity under 20 CFR 416.974(a)(1).

The Claimant testified that her employment was performed alongside her husband who was able to assist her with her work. The evidence on the record supports a finding that the Claimant was only able to remain employed because of the specially arranged circumstances that allow her to prepare for and get to and from her work. The federal regulations allow for a finding of disability under these circumstances. 20 CFR 416.973(c).

Therefore, there is not sufficient evidence on the record to establish that Claimant is engaged in substantial gainful activity as defined in 20 CFR 416.971 through 416.975. Therefore this Administrative Law Judge finds that the Claimant is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

STEP 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 not disabled.

At step two, a determination is made whether the Claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the 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 and 416.921). If the Claimant does not have a severe medically determinable impairment or combination of impairments, she is not disabled. If the Claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The Claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months, or result in death.

The Claimant is a 59-year-old woman that is 5' 0" tall and weighs 97 pounds. The Claimant alleges disability due to impaired vision.

The objective medical evidence indicates the following:

The Claimant underwent cataract surgery in October of 2012.

On July 1, 2013, a consultative physician found the Claimant's to be suffering from progressive loss of vision. The consultative physician determined that notwithstanding the increasing difficulty of performing work with progressive loss of vision, the Claimant should otherwise be able to work in a seated or standing position with no limitations in walking.

On August 7, 2013, a treating physician measured the Claimant's visual acuity at light perception in her right eye and hand motion in her left eye.

A computed tomography (CT) scan of the Claimant's brain on August 6, 2013, was negative.

The evidence on the record indicates that the Claimant's was been diagnosed with impaired vision by a treating physician, which has resulted in significant impairments to independently perform work related tasks. Therefore, this Administrative Law Judge finds a severe physical impairment that has more than a de minimus effect on the Claimant's ability to perform work activities. The Claimant's impairments have lasted continuously, or are expected to last for twelve months.

STEP 3

Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4.

At step three, a determination is made whether the Claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the Claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the Claimant is disabled. If it does not, the analysis proceeds to the next step.

On August 7, 2013, a treating physician measured the Claimant's visual acuity at light perception in her right eye and hand motion in her left eye. The Claimant's impairment meets or equals a listed impairment under section 2.02 Loss of visual acuity because the remaining vision in her better eye after best correction is 20/200 or less.

Because the Claimant's impairment meets a statutory listing in federal code of regulations 20 CFR Part 404, Subpart P, Appendix 1, and this Administrative Law Judge finds that the Claimant to be disabled without regard to her age, education, and work experience. 20 CFR 416.920(c).

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 Medical Assistance (M.A.) benefits.

DECISION AND ORDER

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:

The Department is **ORDERED** to initiate a review of the May 17, 2013, application for assistance if it is not already done so, to determine if all other non-medical eligibility criteria are met. The Department shall inform the claimant of the determination in writing. It is further **ORDERED** that the Department shall review this case in on May 1, 2015, and obtain updated application forms (DHS49) and medical records as directed by policy.



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

Date Signed: May 20, 2014

Date Mailed: May 20, 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

201366416/KS

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

KS/hj

cc:

