

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-52033
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: October 23, 2013
County: Antrim

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 October 23, 2013, from Lansing, Michigan. Participants on behalf of Claimant included Claimant and his [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist and [REDACTED], General Services Program Manager.

ISSUE

Did the Department of Human Services (the Department) properly deny Claimant's application for Medical Assistance (MA-P), retroactive Medical Assistance (retro MA-P) and State Disability Assistance (SDA)?

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 26, 2013, Claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
2. On May 23, 2013, the Medical Review Team denied Claimant's application stating that Claimant's impairments lacked duration.
3. On May 31, 2013, the Department caseworker sent Claimant notice that his application was denied.

4. On June 11, 2013, Claimant filed a request for a hearing to contest the Department's negative action.
5. On August 6, 2013, the State Hearing Review Team again denied Claimant's application.
6. On October 23, 2013, the hearing was held. At the hearing, Claimant waived the time periods and requested to submit additional medical information.
7. On October 24, 2013, additional medical information was submitted and sent to the State Hearing Review Team.
8. On December 16, 2013, the State Hearing Review Team again denied Claimant's application.
9. Claimant is a [REDACTED]-year-old man whose birth date is [REDACTED]. Claimant is 5'5" tall and weighs 115 pounds. Claimant is a [REDACTED]. Claimant is able to read, write and does have basic math skills.
10. Claimant last worked January 2013 at [REDACTED] caring for [REDACTED]. [REDACTED] Claimant has also worked as a [REDACTED].
11. Claimant alleges as disabling impairments: dizzy spells, severe headaches, shunt the left side of the brain, brain surgery January 2013, blackouts. Claimant alleges no disabling mental impairments.

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 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 MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) 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 of Human Services (DHS or Department) administers the MA 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 of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance 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

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 is 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.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, 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).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

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 your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

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).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
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 ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
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. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, Claimant is not engaged in substantial gainful activity and has not worked since [REDACTED]. Claimant is not disqualified from receiving disability at Step 1.

The subjective on the record indicates that Claimant testified that he lives in a mobile home with his [REDACTED] and he is single with no children under 18 and no income. Claimant does receive Food Assistance Program benefits. Claimant does have a [REDACTED] but drives very little. Claimant cooks prepackaged foods two times per week. Claimant grocery shops one time per week and needs help because movement makes him dizzy. Claimant does take out the garbage and do dishes. Claimant watches television one

hour per day and uses the computer two hours per day. Claimant testified he can stand for 20 minutes and can sit with no limits. He can walk a few feet. He is able to shower, dress himself, squat down and get back up, tie his shoes and touch his toes but he cannot bend at the waist because he gets dizzy. Claimant has no pain and can carry 100 pounds. He can carry 25 pounds on a repetitive basis. Claimant testified he does smoke 4 to 5 cigarettes per day, his doctors told him to quit and he is not in a smoking cessation program.

The objective medical evidence on the record indicates the Claimant was admitted [REDACTED] secondary to increasing lethargy and headache. [REDACTED] scan showed prominent ventriculomegaly. He underwent proximal ventriculoperitoneal shunt exploration and its proximal valve was replaced, which was noted to be clogged. He had continued lethargy and was taken back to surgery for replacement of a complete ventriculoperitoneal shunt. He did well operatively and he was ambulating, talking and had improved mental status, page 80. On [REDACTED] the Claimant shunt that was noted to have been dialed up to 2.5. He reported that his symptoms have continued. Repeat CT imaging of his brain demonstrated consistent, small ventricles leading to the doctor's belief that he may be over draining. On examination, he was awake and alert and did not appear to be in acute distress. He was able to ambulate without difficulty. He moved all extremities 5/5. His wound was well healed. The doctor indicated that if the Claimant continued over drain, he would need to undergo repeat surgery for replacement with a valve that would be working better, page 98.

A [REDACTED] indicates that Claimant had a complete and comprehensive neurological examination. Vital signs were stable. He was afebrile. He was awake and alert but appeared to be in moderate distress at that time as he had a headache. [REDACTED] brain demonstrates severe ventriculomegaly with subependymal flows surrounding both occipital horns and lateral ventricles. The impression was a shunt malfunction the doctor recommended urgent surgical intervention to revise the shunt, replace his shunt valve or possibility of complete shunt replacement. A [REDACTED] [REDACTED] indicates that he underwent surgical revision with replacement of his valve with a medium pressure nonadjustable valve. He had no headache. He did have some dizziness and unsteadiness. He otherwise was able to ambulate without difficulty. He had no nausea and vomiting. Vital signs were stable. He was afebrile. He was awake and alert and in no distress. He was oriented to person, place and time. His pupils were equal and round and reactive to light. Extraocular muscles were intact. Surgical staples had been removed. His wound was clean, dry and intact. Shunt pumps had good refill. In [REDACTED] indicates that Claimant had a small bowel obstruction for which he underwent [REDACTED] [REDACTED] showed a new massive hydrocephalus which was revised [REDACTED].

At Step 2, Claimant has the burden of proof of establishing that he 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 could result in death. There is sufficient objective

clinical medical evidence in the record that Claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of his body; Claimant has had at least three surgeries in the last year to revise or replace shunts in various locations of his body. This Administrative Law Judge finds that the medical record is sufficient to establish that Claimant has a severely restrictive physical impairment.

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, App. 1, 12.00(C).

There is insufficient objective medical/psychiatric evidence in the record indicating Claimant suffers severe mental limitations. There is no mental residual functional capacity assessment in the record. There is insufficient evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent Claimant from working at any job. Claimant was oriented to time, person and place during the hearing. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. The evidentiary record is insufficient to find that Claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that Claimant has met his burden of proof at Step 2.

If Claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of Claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

At Step 4, there is evidence upon which this Administrative Law Judge could base a finding that Claimant is unable to perform work in which he has engaged in, in the past.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not Claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

At Step 5, the burden of proof shifts to the Department to establish that Claimant does not have residual functional capacity.

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.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Claimant has submitted sufficient objective medical evidence that he lacks the residual functional capacity from January 2013-November 2013, based upon his surgeries and need for recovery time, to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do light or sedentary tasks if demanded of him.

The Department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the Claimant does meet the definition of disabled under the MA-P program and because the evidence of record does establish that Claimant is unable to work for a period exceeding 90 days, the Claimant does meet the disability criteria for State Disability Assistance benefits either

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant has established that he meets the disability criteria for disability under the Medical Assistance, retroactive Medical Assistance and State disability Assistance programs for a closed period of time from January 2013 through December 31, 2013.

Accordingly, the Department's decision is **REVERSED**.

The Department is **ORDERED** to initiate a review of the application 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. If Claimant is otherwise eligible, the Department shall open a medical assistance case for Claimant from January 2013 through December 2013 and state disability assistance case for

Claimant from March 26, 2013 application date through December 2013 and pay to Claimant any benefits to which he is entitled

A medical review should be scheduled for January 2014. The Department should check to see if Claimant is in current payment status or not. If the Claimant is in current payment status at the medical review no further action will be necessary. However, if the Claimant is not in current payment status at the medical review, the Department is to obtain updated application forms (DHS-49) and obtain updated medical records.

/s/

Landis Y. Lain
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 1/7/14

Date Mailed: 1/8/14

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.

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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

LYL/tb

cc:

