

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201354232
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 14, 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, an in-person hearing was held on January 14, 2014, from Kalamazoo, Michigan. Participants on behalf of Claimant included [REDACTED] or [REDACTED] as the Claimant's authorized hearings representative. Participants on behalf of the Department of Human Services (Department) included [REDACTED]

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 April 28, 2010, the Claimant submitted an application for Medical Assistance (MA) benefits alleging disability.
2. On July 10, 2011, the Medical Review Team (MRT) determined that the Claimant did not meet the disability standard for Medical Assistance (MA-P) because it determined that the Claimant is capable of performing other work despite his impairments.
3. On September 1, 2011, the Medical Review Team (MRT) determined that the Claimant did not meet the disability standard for Medical Assistance (M.A.) after determining that there was no basis for changing the July 10, 2011, decision.
4. The Claimant applied for federal Supplemental Security Income (SSI) benefits at the Social Security Administration (SSA).

5. The Social Security Administration (SSA) denied the Claimant's federal Supplemental Security Income (SSI) application.
6. On November 28, 2013, the Claimant received a fully favorable decision from the Social Security Administration's Office of Disability Adjudication and Review, with a finding of disability through July 14, 2011.
7. On May 20, 2013, the Department sent the Claimant notice that it was denying retroactive Medical Assistance (M.A.) benefits from January 1, 2010, through June 30, 2011.
8. On August 2, 2013, the Department received the Claimant's hearing request, protesting the denial of disability benefits.
9. On September 26, 2013, the State Hearing Review Team (SHRT) upheld the Medical Review Team's (MRT) denial of Medical Assistance (MA-P) benefits for the retroactive period.
10. On September 30, 2013, the Michigan Administrative Hearing System issued a summary disposition based on the Claimant's eligibility for Medical Assistance (M.A.) based on a finding of disability by the Social Security Administration.
11. On July 14, 2011, the Claimant was granted an administrative hearing to settle the issue of Medical Assistance (M.A.) eligibility for the retroactive period before July 1, 2011.
12. The Department had denied retroactive Medical Assistance (M.A.) based on disability from October 1, 2010, through June 30, 2011.
13. The Claimant's representative clarified the Claimant's grievance as a protest of retroactive Medical Assistance (M.A.) for May and June of 2011.
14. The Claimant is a 44-year-old man whose birth date is [REDACTED].
15. The Claimant has the residual functional capacity to perform light work.
16. The Claimant's disability claim is based on memory loss, a heart condition, lower back pain, and stage 3 renal failure.

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 his 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 and State Disability Assistance (SDA) 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 he 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, he is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

No evidence was presented during the hearing that the Claimant is engaged in substantial gainful activity. The Claimant is not found to be disqualified from receiving disability at Step 1. In order to conduct a thorough evaluation of Claimant's disability assertion, the analysis will continue.

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 CF R 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 CF R 404.1521 and 416.921). If the Claimant does not have a severe medically determinable impairment or combination of impairments, he 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 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 result in death.

The Claimant is a 44-year-old man. The Claimant alleges disability due to memory loss, a heart condition, lower back pain, and renal failure.

The Claimant did not testify during the hearing. The Claimant's ability to perform work activities is therefore based on the objective medical evidence available on the record. The Claimant's impairments due to the subjective effects of pain could not be evaluated without his testimony on the record.

The objective medical evidence indicates the following:

A treating physician has diagnosed the Claimant with atherosclerosis, syncope, non-cardiac chest pain, hyperlipidemia, hypertension, asthma, chronic obstructive pulmonary disease (COPD), and gastroesophageal reflux disease (GERD).

On October 29, 2009, a treating physician found the Claimant's cardiac ejection fraction to be 65%, and there was no appreciable mitral regurgitation, or aortic regurgitation. An adenosine cardiolute stress test was performed on March 18, 2010, with normal results, there was no evidence of ischemia, ejection fraction was estimated to be 58%, he had normal cardiac volume, he had normal blood pressure, and experienced pain reported at a five out of 10 while under adenosine stress.

The Claimant has a history of stent placement. The Claimant has been diagnosed with hypertension, noncompliance with medication, right side numbness, cocaine abuse, a history of frequent emergency room visits for uncontrolled hypertension, and a history of passing out. An angiography test in June of 2009 revealed moderate disease in the circumflex artery with stent placement.

The Claimant has a history of renal failure secondary to hypertension. The Claimant's hypertension is the result of noncompliance with treatment and cocaine abuse. The Claimant's artery disease is secondary to cocaine abuse and drug seeking behavior. The Claimant underwent an

ultrasound examination of his kidneys on January 20, 2011, with normal results. The results of blood tests ordered by treating physicians indicate the Claimant had serum creatinine level of 1.0 mg/dL on March 26, 2010, 1.31 mg/dL on January 15, 2011, 1.2 mg/dL on February 27, 2011, 1.7 mg/dL on March 13, 2011, 2.1 mg/dL on May 12, 2011, and 1.31 mg/dL on June 14, 2011.

Treating physicians found the Claimant to have an extensive history of drug seeking behavior. Hospital records revealed that the Claimant has a history of frequent presentations to the emergency room with frequent admission due to noncompliance and abuse of cocaine.

A treating physician reported that the Claimant was admitted for stroke symptoms on October 20, 2010, and a computed tomography (CT) scan produced negative results. There was no evidence of an ischemic event and the blood tests were positive for cocaine. On November 14, 2010, the results of a chest x-ray were normal and a computed tomography (CT) scan of the Claimant's brain were normal.

A treating physician found the Claimant to have severe impairments of immediate memory and organization. A treating physician found the Claimant to have moderate impairment of recent memory, problem solving, auditory processing, and retention.

A treating physician determined that the Claimant is capable of effective ambulation with a slow gait and a slight limp with a straight cane held in his right hand. Without the cane, his limp is more pronounced and he demonstrated a positive Trendelenburg's sign on the right. The Claimant stands with the right shoulder lower. The Claimant's core strength and lower extremity strength is impaired. The Claimant's range of motion of his hips is reduced.

A medical examination report dated April 26, 2010, indicates that the Claimant is capable of lifting 20 pounds frequently, lifting 50 or more pounds occasionally, that he has no physical limitations, is capable of grasping, reaching, pushing, pulling, and fine manipulation with both hands, and operating foot controls with both feet.

This Administrative Law Judge finds that the Claimant has established 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.

The Claimant's impairment failed to meet or equal a listing for memory loss under section 12.00 Mental Disorders.

The Claimant's impairment failed to meet or equal a listing for a heart condition under section 4.00 Cardiovascular system. A treating physician diagnosed the Claimant with atherosclerosis, syncope, non-cardiac chest pain, hyperlipidemia, and hypertension. On October 29, 2009, a treating physician found the Claimant's cardiac ejection fraction to be 65%. On March 18, 2010, a treating physician found the Claimant's cardiac ejection fraction to be 58%. The objective medical evidence does not support a finding of ischemia, appreciable mitral regurgitation, or aortic regurgitation. An adenosine cardiolite stress test was performed on March 18, 2010, with normal results.

The Claimant's impairment failed to meet the listing for lower back pain under section 1.04 Disorders of the spine, because the objective medical evidence does not demonstrate that the Claimant suffers from nerve root compression resulting in loss of motor strength or reflexes, or resulting in a positive straight leg test. The objective medical evidence does not demonstrate that the Claimant has been diagnosed with spinal arachnoiditis. The objective medical evidence does not support a finding that the Claimant's impairment has resulted in an inability to ambulate effectively. The Claimant is capable of effective ambulation with a pronounced limp without assistance. The Claimant has impaired motor strength and range of motion in his lower extremities.

The Claimant's impairment failed to meet a listing for renal failure under section 6.02 Impairment of renal function because the objective medical evidence does not demonstrate that the Claimant suffers from chronic hemodialysis or peritoneal dialysis. The Claimant has not undergone kidney transplantation. The Claimant underwent an ultrasound examination of his kidneys on January 20, 2011, with normal results. The objective medical evidence does not support a finding that the Claimant's serum creatinine was found to be 5 mg/dL or greater over a three month period.

The medical evidence of the Claimant's condition does not give rise to a finding that he would meet a statutory listing in federal code of regulations 20 CFR Part 404, Subpart P, Appendix 1.

STEP 4

Can the client do the former work that he performed within the last 15 years? If yes, the client is not disabled.

Before considering step four of the sequential evaluation process, a determination is made of the Claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(c)). An individual's residual functional capacity is his ability to do physical and

mental work activities on a sustained basis despite limitations from his impairments. In making this finding, the undersigned must consider all of the Claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, a determination is made on whether the Claimant has the residual functional capacity to perform the requirements of his past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the Claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the Claimant to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the Claimant has the residual functional capacity to do his past relevant work, 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 and last step.

After careful consideration of the entire record, this Administrative Law Judge finds that the Claimant has the residual functional capacity to perform sedentary work or light work as defined in 20 CFR 404.1567 and 416.967.

No evidence was presented on the record of the Claimant's past relevant experience. While there is no evidence to establish that the Claimant does not have any past relevant work experience, there is no evidence upon which this Administrative Law Judge could base a finding that the Claimant is able to perform work substantially similar to work performed in the past.

STEP 5

At Step 5, the burden of proof shifts to the Department to establish that the Claimant has the Residual Functional Capacity (RFC) for Substantial Gainful Activity.

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, client is not disabled.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), a determination is made whether the Claimant is able to do any other work considering his residual functional capacity, age, education, and work experience. If the Claimant is able to do other work, he is not disabled. If the Claimant is not able to do other work and meets the duration requirement, he is disabled.

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 dock et 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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

The objective medical evidence indicates that the Claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior employment and that he is physically able to do less strenuous tasks if demanded of him. The Claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

Claimant is 44-years-old, a younger person who is under age 50 years of age. The evidence available during the hearing does not support a finding that the Claimant is illiterate or unable to speak English. The evidence does not support a finding that the Claimant has prior work experience that is transferrable to skilled work. Based on the objective medical evidence of record Claimant has the residual functional capacity to perform light work. Medical Assistance (MA) is denied using Vocational Rule 20 CFR 202.17 as a guide.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

The objective medical evidence indicates that the Claimant has a well-documented history of frequent presentation at the emergency room with frequent admission due to noncompliance with treatment for hypertension and cocaine abuse. The Claimant has been diagnosed with uncontrolled hypertension secondary to cocaine abuse. The Claimant has been diagnosed with renal failure secondary to uncontrolled hypertension. The Claimant has a history of non-cardiac chest pain without evidence of ischemic event and brain scans have been negative.


Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that the Claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because his substance abuse is material to his alleged impairment and alleged disability.

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.).

DECISION AND ORDER

Accordingly, the Department's determination is **AFFIRMED** REVERSED.

Kevin


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

Date Signed: February 3, 2014

Date Mailed: February 4, 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

KS/hj

cc:

