

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

IN THE MATTER OF:



Reg. No.: 201366772
Issue No(s): [REDACTED]
Case No.: [REDACTED]
Hearing Date: January 16, 2014
County: St. Clair

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 16, 2014 from Lansing, Michigan. Participants on behalf of Claimant included himself and his father. Participants on behalf of the Department of Human Services (Department) included ES [REDACTED] and FIM [REDACTED].

ISSUES

Did the Department of Human Services properly determine that Claimant is not disabled and deny Claimant's July 1, 2013 application for Medical Assistance (MA) 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. Claimant is a 35 year old male. Claimant is 5' 8" tall and weighs approximately 205 pounds. Claimant's formal education consists of 12 years of school.
2. Claimant has past relevant work experience in landscape and tree service labor.
3. Claimant suffered injuries when he fell out of a tree on June 11, 2013.
4. Claimant reports he last worked in 2011, doing landscape and tree service labor.

5. On July 1, 2013, Claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).
6. On August 13, 2013, the Department of Human Services Medical Review Team approved Claimant for State Disability Assistance (SDA) but determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) based on disability.
7. On August 15, 2013, Claimant was sent notice of the Department's determination.
8. On August 28, 2013, Claimant submitted a request for hearing.
9. On October 17, 2013, the State Hearing Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA).

CONCLUSIONS OF LAW

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Disability determinations done by the State of Michigan for Medical Assistance (MA) based on disability use the Social Security Administration standards found in United States Code of Federal Regulations (CFR) at Title 20, Part 416. The law defines disability 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 at least 12 months. To meet this definition, you must have severe impairments that make you unable to do your past relevant work or any other substantial gainful work that exists in the national economy.

Disability determinations done by the State of Michigan, for State Disability Assistance (SDA), use the same standards with one minor difference. For State Disability Assistance (SDA) the medically determinable physical or mental impairments that prevent substantial gainful activity must result in death or last at least 90 days.

In accordance with the Federal Regulations an initial disability determination is a sequential evaluation process. The evaluation consists of five steps that are followed in a set order.

STEP 1

At this step a determination is made on whether Claimant is engaging in substantial gainful activity (20 CFR 416.920(b)). If you are performing activities for pay or profit, we will use 20 CFR 416.971 through 416.975 to evaluate the activities to determine if they are substantial gainful activity. Substantial gainful activity is defined as work activity: that is both substantial and gainful; and involves doing significant physical or mental activities. Gainful work activity is work activity that you do for pay or profit (20 CFR 416.972). If you are engaged in substantial gainful activity, you are not disabled regardless of how severe your physical or mental impairments are and regardless of your age, education, and work experience.

Based on the evidence in the record and Claimant's testimony, Claimant is not engaged in substantial gainful activity.

STEP 2

At the second step it is determined whether you have a severe physical or mental impairment that meets the duration requirement or a combination of impairments that is severe and meets the duration requirement (20CFR 416.920). 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. When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include:

- Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;
- Capacities for seeing, hearing, and speaking;
- Understanding, carrying out, and remembering simple instructions;
- Use of judgment;
- Responding appropriately to supervision, co-workers and usual work situations; and;
- Dealing with changes in a routine work setting.

An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities (20 CFR 416.921).

In addition to the limiting effect of the impairments they must also meet durational requirements, 90 days for State Disability Assistance (SDA) and 12 months for Medical Assistance (MA) based on disability. If we determine that your impairments are not severe, you are not disabled.

Claimant asserts disability based upon a broken back. What follows is a synopsis of all relevant evidence in the record from medical sources presented in chronological order.

There are hospital records for treatment of Claimant's injuries sustained when he fell out of a tree. [REDACTED], the attending physician determined that Claimant had: closed fracture of thoracic vertebra; closed fracture of lumbar vertebra; closed fracture of two ribs; closed head injury with concussion; abrasion of the scalp; a foot contusion; and a sprained ankle. (Page 25)

There is a follow up report from [REDACTED] of the Michigan Head and Spine Institute, dated July 15, 2013. The Doctor found Claimant had 5/5 bilateral lower extremity strength with sensation intact. X-Rays taken showed stable compression fractures in the thoracic spine. Claimant was directed to continue wearing a brace for 12 weeks and then get another MRI. (Pages 8 -10)

On September 9, 2013, an MRI without contrast was done of Claimant's thoracic spine.

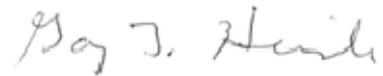
There is a follow up report from [REDACTED] of the Michigan Head and Spine Institute, dated September 16, 2013. The previous day's MRI was reviewed. The Doctor reports that Claimant reported continued pain at T12. The MRI showed: mild progression of compression fractures at T11 and T12; retropulsed bone at T12 still measuring 6mm; and some myelomalacia behind T12. The Doctor speculated that Claimant might need T12 decompression with stabilization from T11 through L1 if he had not improved in another month.

Claimant bears the burden of providing medical evidence showing a severe impairment which has lasted at least 12 months. The medical evidence of record indicates that Claimant's condition is improving and expected to resolve within 12 months of his accident. At the time of this hearing, Claimant was only 7 months post-accident. The objective medical evidence of record is not sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more. Therefore, claimant is disqualified from receiving disability at this step.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly determined that Claimant is not disabled and denied Claimant's July 1, 2013, application for Medical Assistance (MA) based on disability.

It is ORDERED that the actions of the Department of Human Services, in this matter, are **UPHELD**.



Gary F. Heisler
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 02/04/2014

Date Mailed: 02/05/2014

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.

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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

GFH/sw

cc:

