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

#### IN THE MATTER OF:



Reg. No.: 2013-67314 Issue No.: Case No.: January 22, 2014 Hearing Date: County: Newaygo

2009

### ADMINISTRATIVE LAW JUDGE: Aaron McClintic

### **HEARING DECISION**

Following Claimant's r equest for a hearing, this matter is before the undersigned Administrative Law J udge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 t o 431.250; and 45 CF R 205.10. After due notice, a telephon e hearing was held on January 22, 2014, from Lansing, Mi chigan. Participants on beha lf of Claimant included the Claimant and his mother and Authorized Representative . Participants on behalf of the Department of Human Services (Department) included

### ISSUE

Did the Department properly deny Claimant's Medical Assistance application?

### FINDINGS OF FACT

- 1. An ex parte review f or MA-P was completed in August 2013 after Claimant turned 21.
- 2. The Medical Review Team denied eligibility on August 15, 2013.
- 3. Claimant filed a request for hearing August 26, 2013, regarding the MA denial.
- 4. A telephone hearing was held on January 22, 2014.
- 5. On November 13, 2013, the State H earing Review Team denied the applica tion because the medical evidenc e of record in dicates that the Claim ant retains the capacity to perform sedentary work.
- 6. Claimant is 6' 0" tall and weighs 150 pounds.
- 7. Claimant is 21 years of age.
- impairments have been medic ally diagnosed as marfan syndrome, 8. Claimant's ADHD, depression, anxiety and opiate dependence.

- 9. Claimant has the following symptoms: pain, fatigue, social isolation, memory and concentration problems.
- 10. Claimant completed 11<sup>th</sup> grade and automotive vocational training.
- 11. Claimant is able to read, write, and perform basic math skills.
- 12. Claimant is not working. Claimant last worked mowing grass part time.
- 13. Cla imant lives with his mother.
- 14. Claimant testified that he cannot perform some household chores.
- 15. Claimant takes the following prescribed medications:
  - a. Wellbutrin
  - b. methadone
- 16. Claimant testified to the following physical limitations:
  - i. Sitting: couple hours ii. Standing: couple hours
  - iii. Walking: 2-3 miles
  - iv. Bend/stoop: difficulty
  - v. Lifting: 50 lbs.
  - vi. Grip/grasp: no limitations
- 17. Claimant testified to ex periencing pain, at a high lev el of 10, on an everyday basis with some pain always present at a low level of 4.
- 18. An MRI report of Claimant's thoracic spine completed on April 22, 2013 states the following under im pression: "No definite abnormality referable to the thor acic spine. There is no ev idence of c ord compression or intrinsic abnormality of the spinal cord."

# 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 oppor tunity for a hearing shall be granted to an ap plicant who requests a hearing because his or her clai m 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 believ ed that the decision is inc orrect. The Department will provide an adm inistrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The Medic al Assistance (MA-P) 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 administers the MA-P 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 uses the Feder al Supplemental Security Income (SSI) policy in determining el igibility for disability und er the MA-P program. Under SSI, disability is defined as:

...the inability to do any substantial gainfu I activit y 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 cont inuous period of not less than 12 months.... 20 CFR 416.905.

Federal regulations r equire that the Depar tment use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"Disability" is:

...the inab ility 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 cont inuous period of not less than 12 months ... 20 CFR 416.905.

In determining whether an indiv idual is disabled, 20 CFR 4 16.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual f unctional c apacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is, or is not, disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if t he individual is working and if the work is substantial gainful ac tivity. 20 CFR 416.9 20(b). In this case, the Claimant is not working. Therefore, the Claimant is not disqualified a this step in the evaluation.

The second step to be determined in considering whether the Clai mant is considered disabled is the severity of the impairment. In order to qualify the impairment must be considered severe, which is defined as an impairment which significantly limits an individual's physical, or mental, ability to perform basic work activities. Examples of these include:

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

In this case, the Claimant's medical evidence of record supports a finding t hat Claimant has significant physical and mental limitati ons upon Claimant's ability to perform basic work activities such as walk ing, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling. Medical evidence has clearly established t hat the Cl aimant has an impairment (or combination of impairments) that has more than a minimal effect on the Claimant's work activities. See Social Security Rulings: 85-28, 88-13, and 82-63.

In the third step of the analysi s, the trier of fact must determine if the Cla imant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Claimant's medical record does not support a finding that the Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. Se e Appendix 1 of Subpart P of 20 CFR Part 404, Part A. Listings 1.04 and 12.04 were considered.

The person claiming a physic al, or mental, disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as clinical/laboratory findings, diagnosis/pre scribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged. 20 CRF 416.913. A conclusory statement by a physician, or mental health pr ofessional, that an individual is disabled, or blind, is not su fficient without supporting medical evidence, to establish disability. 20 CFR 416.927.

The fourth step of the analys is to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 y ears. The trier of fact must determine whet her the im pairment(s) presented prevent the Claimant from doing past relev ant work. In the pres ent case, the Claimant has no history of full time work. This Administrative Law Judge will continue through step 5.

In the final step of the analys is, the trier of fact must determine: if the Claimant's impairment(s) prevent the Claim ant from doing other work. 20 CFR 416.920(f). This determination is based upon the Claimant's:

- 1. residual functional capacity defined simply as "what can you still do despite your limitations? 20 CFR 416.945;
- 2. age, education, and work experience, 20 CFR 416.963-965; and

 the kinds of work which exist in significant numbers in the national economy which the Claimant could perform despite her limitations. 20 CFR 416.966.

The residual functional capac ity is what an individual can do despite limit ations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physic al 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 Dicti onary of Occupational Titles, publis hed 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, led gers, and small tools . Although a sedentary job is defined as one whic h involves sitting, a certain amount of walking and standing is often necessary in carry ing 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 t hough the weight lifted may be very little; a job is in this categor y 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 sed entary and light work. 20 CFR 416.967(c).

**Heavy w ork:** Heavy work involves lifting no mo re than 10 0 pounds at a time wit h frequent lifting or carrying of objects weig hing up to 50 pounds. If someone can d o heavy work, we determine that he or she c an also do medium, light, and sedentary work. 20 CFR 416.967(d).

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once the Claimant makes it to the final step of the analy sis, the Claimant has already establis hed a prima fa cie case of disability. *Richardson v Secretary of Health and Hum an Services*, 732 Fd2 962 (6<sup>th</sup> Cir, 1984). Moving forward the burden of proof rest s with the state to prove by substantial evidence that the Claimant has the residual function capacity for substantial gainful activity.

After careful review of the medic al evidence presented and Claim ant's statements, and considering the Claimant in the most restrictive circumstances this Administrative La w Judge finds that Claimant w ould be able to perform at least work on the sedentary

exertional level. Claimant's own testimony suggests that he could perform work on the medium exertional level.

This Administrative Law Judge finds that Claimant is capable of the requisite s itting, standing and walking for a sedentary job. The Claimant is a younger individual. 20 CFR 416.963. Claimant's previous work has been unsk illed. Federal Rule 20 CFR 404, Subpart P, Append ix 2 contains specific pr ofiles for determining disab ility based on residual functional capacity and vocational pr ofiles. Under Tabl e 1, Rule 201.24 the Claimant is not disabled for the purposes of MA-P. Cl aimant's testimony regarding h is and ability to sit, stand, walk, lift and carry is not sup ported by substantial evidenc e. Claimant failed to present sufficient ev idence that Claimant has a psychologic al impairment that is substantially limiting.

## DECISION AND ORDER

The Administrative Law Judge, based upon t he above findings of fact and conclusion s of law, decides that Cla imant is NOT me dically d isabled for the purpos es of MA- P eligibility.

Accordingly, the Department's decision is hereby **AFFIRMED**.

Am m

Aaron McClintic Administrative Law Judge for Maura Corrigan, Director Department of Human Services

Date Signed: February 10, 2014

Date Mailed: February 11, 2014

**NOTICE OF APP EAL:** The claimant may appea I the Dec ision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsiderati on was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing Syst em (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a par ty within 30 days of the mailing date of this Dec ision and Order . MAHS will not order a rehearing or reconsideration on the Department's mo tion where the final decis ion cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

### 2013-67314/ATM

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 or iginal 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 clai mant must specify all reas ons 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

#### AM/las

CC:

