

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

IN THE MATTER OF:

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████████████████████
████████████████████

Reg. No.: 2013-52432
Issue No.: 2009
Case No.: ██████████
Hearing Date: September 16, 2013
County: Wayne (19)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 September 16, 2013 in Inkster, Michigan. Participants on behalf of Claimant included the Claimant. ██████████ also appeared as the Claimant's Authorized Hearing Representative. Participants on behalf of the Department of Human Services (Department) included ██████████ Medical Contact Worker.

ISSUE

Whether the Department properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) program?

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 January 10, 2013, Claimant applied for MA-P and retro MA-P (November 2012).
2. On March 20, 2013, the Medical Review Team denied Claimant's request.
3. The Department issued a Notice of Case Action dated March 25, 2013 denying the Claimant's MA-P application. Exhibit 1

4. On June 5, 2013 Claimant's AHR submitted to the Department a timely hearing request.
5. On August 16, 2013 the State Hearing Review Team (SHRT) found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on September 18, 2013, and on November 7, 2013 additional medical evidence was sent to SHRT.
7. On February 2, 2014 the SHRT found the Claimant not disabled.
8. Claimant is ■■■ years old with a birth date of ■■■■■■■■■■.
9. Claimant completed the 11th grade and obtained a GED.
10. Claimant has employment experience working for a vending machine servicing company and also supplying gas stations and party stores with food items. The Claimant was also a porter for a car dealership driving and servicing cars for the dealership.
11. Claimant alleges physical impairments due to shortness of breath due to COPD, impaired vision in both eyes of 20/200 (corrected) due to retinal disease caused by diabetes, back problems and diabetes and neuropathy caused by diabetes in his feet.
12. The Claimant alleges mental disabling impairments including bipolar disorder and depression with psychotic features and panic disorder.
13. Claimant's limitations have lasted for 12 months or more.

CONCLUSIONS OF LAW

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 MA-P. 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 are 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.

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

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).

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, Appendix 1, 12.00(C).

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.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is “severe” or a combination of impairments that is “severe.” 20 CFR 404.1520(c). An impairment or combination of impairments is “severe” within the meaning of 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; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the Claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the Claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the Claimant’s residual functional capacity. 20 CFR 404.1520(e). An individual’s residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, the trier must consider all of the Claimant’s impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the Claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the Claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the Claimant has the residual functional capacity to do his/her past relevant work, then 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 step.

In the fifth step, an individual’s residual functional capacity is considered in determining whether disability exists. An individual’s age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Here, Claimant has satisfied requirements as set forth in steps one, two and three of the sequential evaluation. The Claimant is not currently engaging in substantial gainful activity and is not employed; thus, is not disqualified at Step 1. The Claimant’s medical evidence referenced below also satisfies the requirement of severity of his impairment thus satisfying Step 2 of the required analysis.

A consultative examination was conducted on [REDACTED]. The examiner noted a history of breathing problems for which he does have decreased breath sounds and mild shortness of breath today. A pulmonary function test was also performed and noted FEV lowest score 1.9 and after bronchodilator lowest score 2.1. The examiner noted oxygen may be required in future. The Claimant's eyes were evaluated and both eyes were 20/200 corrected vision. The Claimant is still a two pack per day smoker. The examiner noted decreased breath sounds and coarse breath sound throughout.

The claimant was also evaluated by his treating primary care physician who noted depression, breath sounds, slow painful gait, and that claimant was deteriorating. The examiner had seen the Claimant since [REDACTED] and noted limitations but noted we are unable to do functional assessment. The examiner attached a hospital admit date of [REDACTED] for diabetic ketoacidosis, electrolyte imbalance and leukocytosis. At the time of the admission the Claimant was homeless.

A consultative mental status examination was conducted [REDACTED]. The diagnosis was bipolar disorder, depressed with possible psychotic features, and panic disorder. GAF was 45-50. Prognosis was guarded. Medical Source Statement: The Claimant has a long history of Bipolar Disorder Depressed. He has panic attacks when around crowds. He has trouble getting along with other people. He gets angry easily and yells at whoever is around. He has history of being in prison for fleeing and possession of cocaine and another charge of identity theft. He has been homeless. He has not been able to take care of himself for some time now. His niece has been taking care of him. He does need a referral to Community Mental Health.

Listing 2.02 Loss of Visual Acuity provides that a person is disabled when the vision in the better eye after best correction is 20/200 or less. 2.01 (2) defines statutory blindness as established by the Social Security Act as central visual acuity of 20/200 or less in the better eye with use of correcting lens. Based upon this objective medical evidence provided by the Consultative Examiner, it is determined that the Claimant meets the medical equivalent of the listing and thus is determined to be disabled at Step 3.

Additionally based upon the objective medical evidence, it is clear based upon the Claimant's treating physician's evaluation and the documented deteriorating nature of the Claimant's health as documented in the consultative medical examination, as well as the consultative mental status evaluation evaluating the Claimant with a GAF of 45 to 50 with a guarded prognosis, that the Claimant could not perform his past relevant work as a porter driving cars or delivering food items to gas stations or party stores.

The Claimant was [REDACTED] years of age at the time of the application and will soon be [REDACTED] years of age and has an 11th grade education and thus is considered an individual closely approaching advanced age. In light of the foregoing, it is found that the Claimant maintains the residual functional capacity for work activities on a regular and continuing basis to meet the physical and mental demands required to perform sedentary work as defined in 20 CFR 416.967(a). Based upon the foregoing review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P,

Appendix II] as a guide, specifically Rule 201.09, that the Claimant would have been found disabled for purposes of the MA-P on this basis as well.

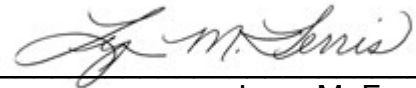
DECISION AND ORDER

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 MA-P and/or SDA benefit program.

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:

1. The Department is ORDERED to initiate a review of the application dated January 10, 2013 and applicable retro application (November 2012), if not done previously, to determine Claimant's non-medical eligibility.
2. A review of this case shall be set for March 2015.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 6, 2014

Date Mailed: March 6, 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;

2013-52432/LMF

- 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

LMF/cl

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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