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

IN THE MATTER OF:



Reg. No.: 2013-69680

Issue No.: 2009

Case No.: Hearing Date:

February 11, 2014

County: Wayne-18

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

## **DECISION AND ORDER**

Following Claimant's r equest for a hearing, this matter is before the undersigned Administrative Law J udge pursuant to MC L 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 February 11, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Hu man Services (Department) included

# **ISSUE**

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

### 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 applied for MA-P and SDA on June 20, 2013.
- 2. The Medical Review Team denied the application on September 4, 2013.
- Claimant filed a request for hearing September 18, 2013, regarding the MA and SDA denials.
- 4. A telephone hearing was held on February 11, 2014.
- 5. On October 29, 2013, the State Hearing Review Team determined that Claimant retains the capacity to perform light work.
- 6. Claimant is 6' 0" tall and weighs 249 pounds.
- 7. Claimant is 44 years of age.

- 8. Claimant's impairments have been medically diagnosed as hip injury and rheumatoid arthritis.
- 9. Claimant has the following symptoms: pain, fatigue, and joint swelling.
- 10. Claimant completed a GED.
- 11. Claimant is able to read, write, and perform basic math skills.
- 12. Claimant is not working. Claimant last worked full time in April 2013, as a clothes sorter. Claimant previously worked as a plumber.
- 13. Cla imant lives with his parents.
- 14. Claimant testified that he cannot perform household chores.
- 15. Claimant takes the following prescribed medications:
  - a. Meloxican
  - b. Prilosec
  - c. Seroquel
- 16. Claimant testified to experiencing pain, at a high level of 8-9, on an everyday basis.
- 17. Claimant testified to the following physical limitations:

i. Sitting: 30-40 minutes

ii. Standing: 5-10 minutes

iii. Walking: 25-50 yards

iv. Bend/stoop: some difficulty

v. Lifting: 2-3 pounds

vi. Grip/grasp: no limitations

18. Claimant had a hip replacement on April 1, 2013.

#### 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 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 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 under 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 continuous 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 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.

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 activity. 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 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 the third step of the analysi s, the trier of fact must determine if the Claimant's impairment (or combination of impairments) is listed in Append ix 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. See Appendix 1 of Subpart P of 20 CFR Part 404, Part A. Listings 14.09 and 1.02 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 ass essment of ability to do work-related activitie s, or ability to reason and to make appropriate mental adjustments, if a mental dis ability is being alleged. 20 CRF 416.913. A conclusory statement by a physic ian, or mental health p rofessional, that an individual is disabled, or blind, is not sufficient 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 impairment(s) presented prevent the Claimant from doing past relevant work. In the present case, the Claimant's past employment was as a clothes sor ter. Working as a clothes sorter, as described by Claimant at hearing, would be considered light work. The Claimant's impairments would prevent him from doing past relevant 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:

- 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

3. 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 indiv idual can do despite limit ations. 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 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 sedentary 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 with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can doneavy work, we determine that he or she can 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 Law Judge finds that Claimant would be able to perform work, at least work, on the sedentary 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 profiles for determining disab ility based on residual functional capacity and vocational profiles. Under Table 1, Rule 201.21 the Claimant is not disabled for the purposes of MA-P and SDA. Claimant's testimony regarding his limitations and ability to sit, stand, walk, lift and carry is not supported by substantial evidence.

# **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusion sof law, decides that Claimant is not medically disabled for the purposes of MA-P and SDA eligibility.

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

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Administrative for Department

Aaron McClintic
Law Judge
Maura Corrigan, Director
of Human Services

Date Signed: March 4, 2014

Date Mailed: March 4, 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, i f 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).

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:

