

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-50235
Issue Nos.: 2009
Case No.: [REDACTED]
Hearing Date: November 13, 2013
DHS County: OAKLAND (04)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

AMENDED HEARING DECISION

Clerical errors were contained in the Conclusions of Law and Decision and Order Sections of the Hearing Decision dated June 6, 2014. This Amended Hearing Decision has been prepared to properly Order that the Administrative Law Judge, based on the findings of fact and conclusions of law, finds Claimant disabled for purposes of the MA-P benefit program.

The "Date Signed" and "Date Mailed" section has been changed from June 6, 2014 to July 25, 2014, reflecting the current date. No other changes to the Decision have been made.

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 three way hearing was held on November 13, 2013, from Detroit, Michigan. The Claimant appeared and testified by telephone. [REDACTED] appeared as a witness. [REDACTED] the Claimant's Authorized Hearing Representative, also appeared. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist.

ISSUE

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

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On August 16, 2012, the Claimant submitted an application for public assistance seeking MA-P and retro MA benefits (May, 2012).
- 2.
3. The Claimant no longer resides in Michigan since April 2013. The Claimant's claim covers May 12, 2012 through April 2013.
4. On February 14, 2013, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1)
5. The Department notified the Claimant of the MRT determination on February 20, 2013.
6. On May 20, 2013, the Department received the Claimant's AHR's timely written request for hearing.
7. On August 2, 2013, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
8. An Interim Order was issued November 18, 2013. The new evidence was submitted to the State Hearing Review Team on March 3, 2014.
9. On May 5, 2014, the State Hearing Review Team found the Claimant not disabled.
10. The Claimant alleges physical disabling impairments due to chronic seizures and epilepsy.
11. The Claimant has not alleged any mental disabling impairment.
12. At the time of hearing, the Claimant was 33 years old with a [REDACTED] birth date. Claimant is now 34 years of age. Claimant is 5'8" in height; and weighed 135 pounds at the time of the hearing. The Claimant has a 9th grade education. The Claimant's past work was performing ironwork constructing pre-fabricated buildings. The Claimant last worked in February 2013.
13. The Claimant's impairments have lasted or are expected to last for 12 months duration 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.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

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). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a) (4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity and, therefore, is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, 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 dealing with changes in a routine work setting.

Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a Claimant's age, education, or work experience, the impairment would not affect the Claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

The Claimant alleges physical disabling impairments due to chronic seizures due to epilepsy.

The Claimant has not alleged any mental disabling impairments.

A summary of the medical evidence follows.

The Claimant was seen in the ER for seizure on October 29, 2013 and discharged. The Claimant's Kepra dose was increased. The Claimant had two seizures and one seizure in the ER and was given Ativan. Patient became combative after the seizure. The Claimant was discharged home same day.

In August 2013, the Claimant was admitted for a three-day hospital stay from August 27 to August 30, 2013. At that time, the diagnosis was epilepsy with intractable epilepsy, respiratory failure and seizure with cognitive disorder. While hospitalized safety factors were imposed including reach fall precautions, the Claimant was intubated during his hospitalization. The Claimant had three's seizure like episodes prior to being brought to

the hospital. While in the emergency Department, the Claimant exhibited additional episodes of seizure like activity that lasted approximately one minute. Claimant was put in soft restraints due to combative behavior. The diagnosis was seizure disorder, arthritis, chronic back pain and left kidney failure. A CT of the head was performed during the hospitalization, the impressions were no signs of intra-cranial hemorrhage or mass effect. The patient remained on the ventilator for much of the stay.

The diagnosis was cognitive disorder – chronic epilepsy. During the stay, EEG monitoring demonstrated electrographic abnormalities. The Claimant was discharged when his condition improved with outpatient clinic epilepsy follow up. Restrictions of no driving for 8 months until seizure free, no alcohol, no swimming or tub bathing unattended, no swimming without life jacket, no care of minors, no heights such as ladders and no operation of heavy, sharp, or dangerous machinery/equipment.

On July 23, 2013, the Claimant was seen in the ER due to a seizure. The Claimant was assessed as partial complex seizure disorder with intractable epilepsy. The ER doctor found the current medication did not resolve the seizures.

On May 28, 2013, the Claimant was seen by a doctor to establish care in [REDACTED] due to having partial seizures on a daily basis but no grand mal since February 2012. Exam noted that Claimant has kidney damage with only right kidney functioning.

The Claimant was seen by his doctor on June 5, 2012 due to full-blown seizure at his home and was hospitalized at [REDACTED] for 4 days. The Claimant was restricted to no driving.

On August 24, 2012, the Claimant was seen by his doctor in Michigan because he had been having 6-7 partial seizures since prior visit.

On May 30, 2012, the Claimant was admitted for a 3-day hospital stay due to seizures. The Claimant was released with new seizure medication and discharged in stable condition. At the time of this seizure, the Claimant required intubation and his extremities were not aware of stimuli. The Claimant's seizure medications were changed to Kepra.

On December 27, 2012, the Claimant was seen again for his epilepsy and anti-seizure meds were refilled. At the time, the Claimant had no seizure and was feeling good.

The Claimant was evaluated neurologically on June 18, 2012. The reason for the evaluation was due to having a grand mal seizure after several years of no seizures. At the exam, the Claimant also reported that he is having smaller episodes more

frequently. The Claimant's anti-seizure medication was increased to reduce smaller seizure occurrence.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented objective medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. Accordingly, the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404.

The Claimant alleges physical disabling impairments due to chronic seizures due to epilepsy.

Listing 11.02 Epilepsy - convulsive epilepsy (grand mal or psycho motor) was considered in light of the objective medical evidence and Listing 11.03 were reviewed. This Decision reviewed 11.03 as while the medical evidence showed incidents of both grand mal and less severe seizure activity Listing 11.03 appeared more applicable given the medical evidence provided.

Listing 11.03 Epilepsy - nonconvulsive epilepsy (petit mal, psychomotor, or focal), documented by detailed description of a typical seizure pattern including all associated phenomena, occurring more frequently than once weekly in spite of at least 3 months of prescribed treatment. With alteration of awareness or loss of consciousness and transient postictal manifestations of unconventional behavior or significant interference with activity during the day.

Ultimately, it is found that the Claimant suffers from medical conditions that are found to meet Listing 11.03. The Claimant credibly testified that he has experienced seizures since the age of early childhood, 3 years of age. The Claimant's medical records and testimony support compliance with medications. Medications have been consistently increased and seizures have continued to occur. The medical records document the type and pattern of the seizures, two of which occurred during ER admission at the time of admission. The Claimant has had to be intubated on two occasions after grand mal seizures. The Claimant's mother testified to numerous occasions witnessing seizures and their symptoms. The seizure activity continues to occur more frequently than once a month, in spite of at least 3 months of prescribed treatment. Drugs and alcohol are

also deemed not material. The medical evidence submitted does support a finding that listing 11.03 or its medical equivalent is met and additionally the Claimant testified at the hearing that he continues to have seizures and went to the ER two weeks prior to the hearing in this matter.

Therefore, the Claimant is found disabled at Step 3 with no further analysis required.

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 is disabled for purposes of the MA-P.

DECISION AND ORDER

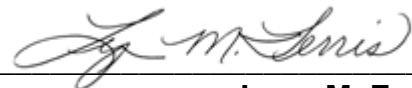
The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant disabled for purposes of the MA-P benefit program.

Accordingly, it is ORDERED:

The Department's determination is 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 shall process the Claimant's application for August 16, 2012, and the Claimant's retro MA-P application for July 2013, to determine the Claimant's non-medical eligibility. The Claimant's ongoing eligibility ends as of April 2013, when the Claimant moved to Missouri and was no longer a resident of the State of Michigan.
2. As this eligibility is based upon disability for a closed period, no annual review is required.



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

Date Signed: July 25, 2014

2013-50235/LMF

Date Mailed: July 25, 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

LMF/am

cc:

