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

IN THE MATTER OF:

[redacted]

Reg. No.: 2014-16154, 2014-16673
Issue No(s).: 2009, 4009, 3000, 5000, 7000
Case No.: [redacted]
Hearing Date: April 1, 2014
County: Oakland County DHS #2

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 April 1, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [redacted] Claimant's Stepmother, and [redacted], Hearing Representative, Accretive Health. Participants on behalf of the Department of Human Services (Department) included [redacted], Eligibility Specialist.

ISSUES

Whether there is jurisdiction to review any non-disability issues?

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) and/or State Disability Assistance (SDA) benefit programs?

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 October 22, 2013, and October 23, 2013, Claimant applied for Medicaid (MA-P), retroactive MA-P and SDA.

2. On November 15, 2013, and November 21, 2013, the Medical Review Team (MRT) found Claimant not disabled.

3. On November 18, 2013 and November 27, 2013, the Department notified Claimant of the MRT determination.

4. On December 2, 2013, December 4, 2013, and March 18, 2014, the Department received Claimant's written requests for hearing.

5. On February 13, 2014, February 18, 2014, and June 20, 2014, the State Hearing Review Team (SHRT) found Claimant not disabled.

6. Claimant alleged physical disabling impairments of renal disease, rheumatoid arthritis, morbid obesity, and blood clots.

7. Claimant alleged no mental disabling impairments.

8. At the time of hearing, Claimant was 48 years old with a [redacted], birth date.

9. Claimant completed the 8th, 9th or 12th grade and has a work history including crew leader at a cemetery.

10. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

Jurisdiction for non-disability issues

In the November 2013 requests for hearing, Claimant's mother indicated she was also contesting denials regarding the Food Assistance Program (FAP), State Emergency Relief (SER), and Home Help Services (HHS). However, the evidence indicates that FAP had been approved since at least August 2013. Reduction in the benefit amounts occurred in November 2013 for all FAP recipients. There is no right to appeal a reduction from a mass update required by state or federal law. Rule 400.903(3) and BAM 600. Further, there was insufficient evidence of application(s) that no action was taken on, or applications that were denied regarding SER and HHS. Rather, the October 22, 2013 and October 23, 2013 applications show only Medicaid and Cash Assistance were applied for. Accordingly, the non-disability issues raised in Claimant's Hearing Requests must be DISMISSED.

Disability

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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 purusant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impariment which meets federal Supplemental Security Income (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 416.913. 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 (i.e. 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 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 an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 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 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 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. Therefore, Claimant 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 416.920(a)(4)(ii); 20 CFR 416.920(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 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(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

6. 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 totally 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).

In the present case, Claimant alleges disability due to renal disease, rheumatoid arthritis, morbid obesity, and blood clots.

On July 1, 2013, Claimant was seen in the Emergency Department for Rheumatoid arthritis exacerbation.

Claimant was hospitalized October 5-18, 2013 for acute kidney injury, acute tubular necrosis and Rheumatoid arthritis. In part, the records note Claimant is morbidly obese likely secondary to severe Rheumatoid arthritis, has an open scrotal wound requiring daily wound care, and he would be discharged to a rehab facility pending PICC line and acute rehab placement or to home with homecare/home help services.

An October 18, 2013, DHS-49 Medical Examination Report lists diagnoses of morbid obesity, Rheumatoid arthritis, and renal disease. Claimant's weight was 148.8 kg. Limitations included standing/walking less than 2 hours in an 8 hour work day. The indicated lifting limitations appear to be in error as it is doubtful Claimant could lift a greater weight frequently than he could lift occasionally. The doctor noted Claimant was currently bed bound, but with physical rehabilitation could ambulate with a walker or possibly even cane post-rehab.

A November 1, 2013, DHS-49 Medical Examination Report lists a diagnosis of pain in knees. The doctor noted his role was as the attending physician during the October 2013 hospitalization, mainly managing the renal failure and coordination of infection treatment. Physical limitations indicated Claimant was not able to walk during the hospitalization and would not be able to use feet/legs for operating foot/leg controls due to pain. The doctor was unsure regarding use of hands/arms for repetitive actions noting Claimant complained of pain.

Claimant was hospitalized December 4, 2013 to December 13, 2013 for a stroke. Claimant was discharged to an extended care facility. Diagnoses included patent foramen ovale, hypertension, chronic kidney disease stage 1, high cholesterol, deep venous thrombosis, transient ischemic attack, ischemic stroke, and thombotic stroke. The records also indicate Claimant had been residing at a rehab facility at the time of this admission, following a prior evaluation at Henry Ford Hospital for severe pain in his ankle, feet and knees for the past three months, which kept him from being able to ambulate.

A January 8, 2014, DHS-49 Medical Examination Report lists a diagnosis of right hemiparesis, unable to walk. This doctor has been treating Claimant since November 22, 2013. Exam findings included DJD, right knee swelling, and right hemiplegia. Physical limitations indicated Claimant was unable to do any lifting, fine manipulating or operating foot/leg controls, and could only use his left hand/arm for grasping, reaching,

pushing, and pulling. Mental limitations were indicated with comprehension, memory, and sustained concentration. It was noted that Claimant needs total care in the home.

Claimant was hospitalized March 5, 2014 through March 11, 2014 for septic arthritis involving right elbow and Rheumatoid arthritis. The records indicate Claimant was a nursing home resident at the time of this admission. It was noted that Claimant's underlying Rheumatoid arthritis seemed to be severe enough to cause significant debility. The prior Rheumatologist was contacted, who indicated Claimant had been compliant with medications and was not bed bound but was rather functional until he lost his insurance around May 2013. Since that time, it appears Claimant had not had Rheumatoid follow up causing progressive debility since he had not been taking medications.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Claimant has presented medical evidence establishing that he does have some limitations on the ability to perform basic work activities. The medical evidence has established that 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 evidence confirms recent diagnosis and treatment of multiple impairments including stroke, right hemiparesis, rheumatoid arthritis, kidney disease, and morbid obesity.

Based on the objective medical evidence, considered listings included: 6.00 Genitourinary Impairments, 11.00 Neurological, and 14.09 Inflammatory arthritis. The medical evidence indicates Claimant meets or equals the intent and severity requirements of at least listing 14.09 A, inflamatory arthritis with persistent inflamation or deformity of one or more major peripheral weight-bearing joints resulting in the inability to ambulate effectively. Accordingly, the Claimant is found disabled at Step 3.

Alternatively, if the analysis were to continue to Steps 4 and 5, the records show that after the prolonged October 2013 hospitalization, Claimant went to a rehab facility but there is no indication of significant improvement. Rather, the December 2013 records document a stroke and discharge back to a nursing facility. The January 8, 2014, DHS-49 Medical Examination Report lists a diagnosis of right hemiparesis and noted Claimant was still unable to walk. Physical limitations indicated Claimant was unable to do any lifting, fine manipulating or operating foot/leg controls, and could only use his left hand/arm for grasping, reaching, pushing, and pulling. Mental limitations were indicated with comprehension, memory, and sustained concentration. It was noted that Claimant needs total care in the home. The records further indicate Claimant was still a nursing home resident at the time of March 2014 hospitalization for septic arthritis involving right elbow and Rheumatoid arthritis. Claimant would be found to have a less than sedentary residual functional capacity ("RFC"). An individual's RFC is the most he/she can still do

on a sustained basis despite the limitations from the impairment(s). 20 CFR 416.945. Accordingly, Claimant would not be able to return to any past relevant work and would be found disabled at Step 5 based on the less than sedentary RFC.

In this case, the Claimant is also found disabled for purposes SDA benefits as the objective medical evidence also establishes a physical or mental impairment that met the federal SSI disabiltiy standard with the shortened duration of 90 days. In light of the foregoing, it is found that Claimant's impairments did preclude work at the above stated level for at least 90 days.

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 for purposes of the MA and SDA benefit programs.

DECISION AND ORDER

Accordingly, 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. Initiate a review of the October 2013 applications, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. A review of this case shall be set for October 2015

2. The Department shall supplement for lost benefits (if any) that Claimant was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.

Colleen Lack

Colleen Lack
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: September 9, 2014

Date Mailed: September 9, 2014

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides or has its principal place of business in the State, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

CL/hj

cc: [redacted]