

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-007000
Issue No.: MEDICAID - DISABILITY
Case No.: [REDACTED]
Hearing Date: October 14, 2014
County: WAYNE-DISTRICT 41

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 October 14, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], the Claimant, [REDACTED], friend, [REDACTED], friend, and [REDACTED], L&S Associates, Authorized Hearing Representative. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Hearing Coordinator.

ISSUE

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 March 27, 2014, Claimant applied for Medicaid (MA-P) and retroactive MA-P.
2. On May 7, 2014, the Medical Review Team (MRT) found Claimant not disabled.
3. On May 13, 2014, the Department notified Claimant of the MRT determination.
4. On July 21, 2014, the Department received Claimant's timely written request for hearing.
5. Claimant alleged disabling impairments including multiple sclerosis, memory problems, pain, difficulty concentrating, legs giving out, and right side of body tensing up.
6. At the time of hearing, Claimant was 33 years old with a [REDACTED], birth date; was 5'7" in height; and weighed 155 pounds.

7. Claimant completed the 12th grade and has a work history including restaurant kitchen work, mostly washing dishes.
8. 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).

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.

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 disabling impairments including multiple sclerosis, memory problems, pain, difficulty concentrating, legs giving out, and right side of body tensing up. While some older medical records were submitted and have been reviewed, the focus of this analysis will be on the more recent medical evidence.

A May 19, 1997, consultative mental status examination, in part, documents a verbal IQ score of 63, performance IQ score of 58, and a full scale IQ score of 56. Claimant was 16 years old when this examination was conducted.

An April 20, 1998, a psychology report for the school district, in part, documents a verbal IQ score of 71, performance IQ score of 72, and a full scale IQ score of 71. Claimant was 17 years old when this examination was conducted. It was noted that three years prior, Claimant's scores were verbal IQ of 58, performance IQ of 66, and full scale IQ of 59.

Claimant was hospitalized September 5-6, 2013 for right sided contractures rule out seizures. An MRI of the brain showed pericallosal and deep white matter signal highly suspicious for a demyelinating process such as multiple sclerosis.

On November 5, 2013, Claimant attended a consultative medical examination. Diagnoses were recently diagnosed multiple sclerosis and learning disability. The examiner did not find limitations that prevent Claimant from being able to perform job duties. However, the neurological exam findings note Claimant did not perform activities with the right lower extremity, such as range of motion and straight leg test in the seated position.

On November 6, 2013, Claimant attended a consultative mental status examination. Diagnoses included memory problems secondary to multiple sclerosis, antisocial personality disorder, and mild mental retardation (based on IQ results from testing at age 16). Claimant demonstrated difficulties in several areas, including concentration and short term memory. It was felt Claimant would be capable of work type activities of a slight to moderate degree of complexity and should be able to remember and execute

a three or possibly four step repetitive procedure with little if any independent judgment or decision making required.

Claimant was hospitalized December 3-4, 2014, for dizziness and vertigo. It was noted that Claimant also admitted to right sided weakness related to multiple sclerosis.

Claimant was hospitalized February 16-18, 2014, for dizziness and exacerbation of multiple sclerosis. Lower extremity weakness on the right side was reported.

A May 7, 2014, office visit note documents diagnoses of multiple sclerosis, weakness, and rhinitis.

June through August 2014 neurologist records document diagnosis and treatment of relapsing remitting multiple sclerosis/unspecified demyelinating disease of central nervous system. Claimant reported mostly intermittent symptoms including paresthesia in his legs, blurred vision, arm/hand weakness, unsteadiness, dizzy spells/nausea and spasms. Examination findings included strength 4/5 in arm and leg at times limited by pain, decreased pin prick along the right arm and right leg, and difficulty with tandem gait.

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, or can be expected to last, 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 relapsing remitting multiple sclerosis/unspecified demyelinating disease of central nervous system, memory problems secondary to multiple sclerosis, antisocial personality disorder, and mild mental retardation.

Based on the objective medical evidence, considered listings included: 11.00 Neurological and 12.00 Mental Disorders. The medical evidence appears to meet or equal listing 12.05. Claimant's IQ testing scores at age 16 or earlier are listing level and Claimant has a physical or mental impairment imposing an additional and significant work-related limitation of function. Accordingly, the Claimant is found disabled at Step 3.

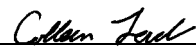
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled for purposes of the MA benefit program.

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 application dated March 27, 2014, 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 December 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
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **11/10/2014**

Date Mailed: **11/10/2014**

CL/hj

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, 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.

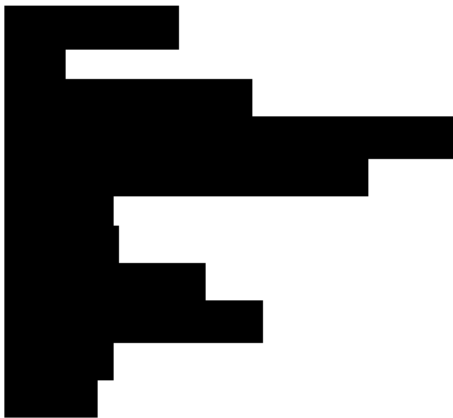
A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

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

cc:

A large black rectangular redaction box covers the names and contact information of the recipients listed under the 'cc:' field.