

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-007716
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: September 23, 2014
County: JACKSON

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 September 23, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Claimant and Claimant's Authorized Representative [REDACTED] from [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) 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. Claimant applied for MA-P on February 21, 2014, with a request for retroactive coverage back to November 2013.
2. The Medical Review Team denied the application on May 5, 2014.
3. Claimant filed a request for hearing on July 14, 2014, regarding the MA denial.
4. A telephone hearing was held on September 23, 2014.
5. Claimant is 5' 10" tall and weighs 140 pounds having lost 20 pounds in the last year.
6. Claimant is [REDACTED] years of age.

7. Claimant's impairments have been medically diagnosed as HIV, Hepatitis C, back, leg, hip and knee pain, cirrhosis, endocarditis, hypertension, depression and anxiety.
8. Claimant has the following symptoms: pain, fatigue, abdominal cramps, joint swelling, insomnia, panic attacks and suicide attempts.
9. Claimant completed 7th grade and a GED.
10. Claimant is able to read, write, and perform basic math skills.
11. Claimant is not working. Claimant last worked 15 years ago as a tattoo artist.
12. Claimant is currently incarcerated.
13. Claimant testified that he cannot perform some household chores.
14. Claimant takes the following prescribed medications:
 - a. Daptomycin
 - b. Zosyn
 - c. Lopinavir
 - d. Ritonavir
 - e. Abacavir
 - f. Zidovudine
 - g. Lamivudine
 - h. Dilantin
 - i. Remeron
 - j. Prozac
15. Claimant testified to the following physical limitations:
 - i. Sitting: 120 minutes
 - ii. Standing: 15 minutes
 - iii. Walking: 3-4 blocks
 - iv. Bend/stoop: difficulty
 - v. Lifting: 8 lbs.
 - vi. Grip/grasp: no limitations
16. In a psychological examination report dated [REDACTED], Claimant was found to have a GAF score of 60 with diagnosis of opioid dependence, polysubstance dependence, major depressive disorder, panic disorder, anxiety disorder and antisocial personality disorder.
17. In a Mental Health Evaluation dated [REDACTED], Claimant was found to have a GAF score of 19.
18. On May 5, 2014, Claimant was found to have a GAF score of 31.

19. On [REDACTED], Claimant was found to have a GAF score of 51.
20. On [REDACTED], Claimant was found to have a GAF score of 55.
21. On [REDACTED], Claimant was found to have a GAF score of 51.
22. On [REDACTED], Claimant was found to have a GAF score of 51.
23. At hearing the record was extended to gather updated medical records. Claimant agreed to this and waived timeliness standards.
24. In a consultative physical examination dated [REDACTED], the examining physician stated the following under CONCLUSION: "In summary [REDACTED] is a [REDACTED] year-old right handed Caucasian male with HIV and hepatitis C. He is not noted to have hepatomegaly. He is undergoing a liver biopsy soon. He has had hepatitis C since 1998. He is currently undergoing therapy for his HIV. He still feels fatigued. He has full strength and range of motion, except flexion of his lumbar spine which he stated he was unable to perform. He almost fell while ambulating and turning. He is able to walk without the cane for 10 feet. He did walk with a limp with the cane as well. He has had seizures for quite some time. He is on Dilantin but despite that he has had at least 1 seizure per month, the last being last week. He needs to follow up with a neurologist to evaluate his seizures and better control them. Concerning his low back pain, he had a negative straight leg raise bilaterally. He had full strength in his lower extremities. He has not been evaluated by a neurosurgeon and has not had physical therapy of epidural steroid injections. He should have a trial of physical therapy to see if his back pain gets any better. If he starts to neurologically decline, he may benefit from a spine evaluation. The patient is able to carry up to 15 pounds and lift up to 10 pounds in his left hand. He has a fracture in his right hand; therefore, he cannot use it at this time and he his right-handed. He is able ambulate 1 block."
25. Claimant testified to having seizures every 30 to 45 days.
26. At hearing the record was extended to gather updated medical information. Claimant agreed to this and waived timeliness standards.
27. Updated records from the Department of Corrections were received and reviewed in making this determination.

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.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the MA-P program. 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.

Federal regulations require that the Department 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 individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, 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 the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, the Claimant is not working. Therefore, the Claimant is not disqualified at this step in the evaluation.

The second step to be determined in considering whether the Claimant is 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 this case, the Claimant's medical evidence of record supports a finding that Claimant has significant physical and mental limitations upon Claimant's ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling. Medical evidence has clearly established that the Claimant has an impairment (or combination of impairments) that has more than a minimal effect on the Claimant's work activities. See Social Security Rulings: 85-28, 88-13, and 82-63.

In the third step of the analysis, 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. 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 14.08, 11.02 and 1.02 were considered.

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 clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities, or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged. 20 CFR 416.913. A conclusory statement by a physician, or mental health professional, 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 analysis to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the Claimant from doing past relevant work. In the present case, the Claimant's past employment was as a tattoo artist. Working as a tattoo artist, 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 analysis, the trier of fact must determine if the Claimant's impairment(s) prevent the Claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the Claimant's:

1. 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 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.

Sedentary work: Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting, or carrying, articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying 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 though the weight lifted may be very little; a job is in this category 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 work: Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy 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 analysis, the Claimant has already established a prima facie case of disability. *Richardson v Secretary of Health and Human Services*, 732 Fd2 962 (6th Cir, 1984).

Moving forward, the burden of proof rests with the State to prove by substantial evidence that the Claimant has the residual function capacity for substantial gainful activity. After careful review of Claimant's extensive medical record, and the Administrative Law Judge's personal interaction with Claimant at the hearing, this Administrative Law Judge finds that Claimant's exertional and non-exertional impairments render Claimant unable to engage in a full range of, even sedentary, work activities on a regular and continuing basis. 20 CFR 404, Subpart P, Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The Department has failed to provide vocational evidence which establishes that Claimant has the residual functional capacity for substantial gainful activity and, that given Claimant's age, education, and work experience, there are significant numbers of

jobs in the national economy which the Claimant could perform despite Claimant's limitations.

Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA-P programs as of December 2013. Claimant's testimony regarding his limitations and ability to sit, stand, walk, lift, and carry is credible and supported by substantial medical evidence. Claimant also has psychological impairments that are substantially limiting.


Therefore, Claimant is found to be disabled.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of November 2013.

Accordingly, the Department's decision is hereby **REVERSED** and the Department is ORDERED to:

1. Initiate a review of the application for MA and retro MA dated February 21, 2014, if not done previously, to determine Claimant's non-medical eligibility.
2. The Department shall inform Claimant of the determination in writing. A review of this case shall be set for December 2015.



Aaron McClintic
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **12/12/2014**

Date Mailed: **12/12/2014**

AM/jaf

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 48909-8139

cc:

