

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-004631
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 21, 2014
County: Calhoun

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, telephone hearing was held on August 21, 2014, from Lansing, Michigan. Participants on behalf of Claimant included his authorized hearings representative [REDACTED] of [REDACTED], [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] and [REDACTED]. During the hearing, the Claimant's representative waived the time period for the issuance of this decision in order to allow for the submission of additional documentation supporting disability.

ISSUE

Did the Department of Human Services (Department) properly determine that the Claimant did not meet the disability standard for Medical Assistance (MA-P) based on disability?

FINDINGS OF FACT

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

1. On February 9, 2012, the Claimant submitted an application for Medical Assistance (MA) benefits and retroactive Medical Assistance (MA) while alleging disability.
2. The Claimant intended to remain a Michigan resident from November 1, 2010, through December 31, 2011.
3. On March 6, 2012, the Medical Review Team (MRT) requested that the Claimant receive a mental status evaluation.
4. On April 12, 2012, the Medical Review Team (MRT) determined that the Claimant did not meet the disability standard for Medical Assistance (MA-P) because it determined that the Claimant's impairment did not meet the durational requirement.

5. On October 24, 2014, Administrative Law Judge Carmen G. Fahie ordered the Department to determine the Claimant's eligibility for Medical Assistance (MA) as of November 1, 2011.
6. On April 12, 2012, the Department notified the Claimant that it had denied Medical Assistance (MA) benefits for November of 2011.
7. On November 26, 2013, Supervising Administrative Law Judge Colleen M. Mameelka granted the Claimant's request for a rehearing.
8. On February 24, 2014, Administrative Law Judge C. Adam Purnell ordered the Department to determine the Claimant's eligibility for Medical Assistance (MA) effective December 1, 2011.
9. On March 26, 2014, the Department sent the Claimant notice that Medical Assistance (MA) had been denied effective December 1, 2011, and ongoing.
10. On June 3, 2014, the Department received the Claimant's hearing request, protesting the denial of Medical Assistance (MA).
11. The Claimant applied for federal Supplemental Security Income (SSI) benefits at the Social Security Administration (SSA).
12. The Claimant is a 46-year-old man whose birth date is [REDACTED]
13. Claimant is 5' 9" tall and weighs 280 pounds.
14. The Claimant is a high school graduate.
15. The Claimant was not engaged in substantial gainful activity at any time relevant to this matter.
16. The Claimant's disability claim is based on a torn left rotator cuff, carpal tunnel syndrome, poor circulation in his legs, depression, liver problems, back pain, and arthritis.

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, Rule 400.901 - 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance has been denied. Mich Admin Code, R 400.903. 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. Department of Human Services Bridges Administrative Manual (BAM) 600 (July 1, 2013), pp 1-44.

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.

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 Medical Assistance and State Disability Assistance (SDA) programs. Under SSI, disability is defined as:

...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.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order.

STEP 1

Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is not disabled.

At step 1, a determination is made on whether the Claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

Substantial evidence on the record supports a finding that the Claimant has not been employed since 2008, which was not disputed by the Department during the hearing. Therefore this Administrative Law Judge finds that the Claimant is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

STEP 2

Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is not disabled.

At step two, a determination is made whether the Claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of

impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1521 and 416.921. If the Claimant does not have a severe medically determinable impairment or combination of impairments, he is not disabled. If the Claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The Claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months, or result in death.

The Claimant is a 46-year-old man that is 5' 9" tall and weighs 280 pounds. The Claimant alleges disability due to a torn left rotator cuff, carpal tunnel syndrome, poor circulation in his legs, depression, liver problems, back pain, and arthritis.

The objective medical evidence indicates the following:

On [REDACTED], a treating physician found the Claimant to have markedly limited activities of social functioning and daily living.

On [REDACTED], a consultative physician found the Claimant to have a restricted range of motion of his left shoulder but has a normal range of motion throughout the remainder of his body. Grip strength on the left was rated at +4/5 compared to 5/5 on the right, and his hands retain full dexterity. The Claimant has no sensory deficits and fine motor skills are intact. The Claimant has no gait disturbance and does not require the use of an assistive walking device.

On [REDACTED], the Claimant expressed suicidal ideation to his treating physician. The Claimant's treating physician diagnosed the Claimant with suicidal ideation and alcohol abuse.

On [REDACTED], a consultative psychologist diagnosed the Claimant with major depressive disorder, alcohol dependence, and anxiety disorder. The consultative psychologist found the Claimant to have moderate symptoms and moderate difficulty in social and occupational functioning. The consultative psychologist found the Claimant to be capable of abstract thinking, simple mathematical calculations, and having normal memory and judgment.

On [REDACTED] the Claimant was diagnosed with prolonged depression.

On [REDACTED], the Claimant was admitted for hematochezia, a gastric ulcer, and a gastrointestinal bleed. Treating physicians found the Claimant to be suffering from chronic cirrhosis secondary to alcohol abuse. A treating physician found the Claimant to have major impairments in social and occupational functioning and was unable to

work. Blood tests revealed that the Claimant had a 1.7 International Normalized Ratio (INR).

On [REDACTED], the Claimant's treating physician found the Claimant to have social and occupational functioning that were seriously impaired and there was an inability to function in almost all areas.

On [REDACTED], a treating physician found the Claimant to have major impairments in social and occupational functioning and unable to work. A treating physician diagnosed the Claimant with agitation and psychosis secondary to alcohol withdrawal. A treating physician diagnosed the Claimant with multiple gastric and peptic ulcers and he was intubated to maintain his airway. The Claimant was discharged home on [REDACTED].

The Claimant reported to his treating physician that he smokes half a pack of cigarettes on a daily basis and consumes 6 beers or 1 fifth of whiskey 2 to 3 days a week.

The evidence on the record indicates that the Claimant's was diagnosed with depression and liver disease by treating physicians, which has resulted in significant impairments to perform activities of daily living. The Claimant's activities of daily living abilities were markedly limited in January of 2010 and again in November of 2011. This Administrative Law Judge finds that the severe damage to the Claimant's organs resulting from long term alcohol abuse combined with a diagnosis and severe symptoms of depression have more than a de minimus effect on the Claimant's ability to perform work activities. The Claimant's impairments have lasted continuously, or are expected to last for twelve months.

STEP 3

Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4.

At step three, a determination is made whether the Claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the Claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the Claimant is disabled. If it does not, the analysis proceeds to the next step.

The Claimant has been diagnosed by treating physicians with major depression of a prolonged nature. The Claimant reported suicidal ideation in May of 2011, and November of 2011, and his treating physician found his statements to be credible enough to require inpatient stabilization treatment. The Claimant's treating physician found the Claimant to have markedly limited activities of social functioning and activities of daily living in January of 2010, and November of 2011. On [REDACTED], the

Claimant's treating physician found him to have social and occupational function that were seriously impaired and there was an inability to function in almost all areas. Based on this objective medical evidence, this Administrative Law Judge finds that the Claimant meets or equals a listing for depression under section 12.04 Affective disorders in federal code of regulations 20 CFR Part 404, Subpart P, Appendix 1.

The term younger individual is used to denote an individual age 18 through 49. For individuals who are age 45–49, age is a less advantageous factor for making an adjustment to other work than for those who are age 18–44. Accordingly, a finding of “disabled” is warranted for individuals age 45–49 who are restricted to sedentary work. 20 CFR 201.00(h)

This Administrative Law Judge finds that the combination of damage to the Claimant's internal organs due to alcoholism and the effects of his severe depression on his ability to perform simple work related tasks, that the Claimant is limited to performing sedentary work tasks over a twelve month period. In November of 2011, the Claimant was found by his treating physician to be unable to function in most areas. In December of 2011, the Claimant required intubation to maintain his airway. Treating physicians found the Claimant's social and occupational abilities have been markedly limited over more than a 12 month period, and the evidence supports a finding that his impairments are likely to continue.

Therefore, under 20 CFR 201.00(h), a finding of disability is warranted.

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 not disabled for purposes of the Medical Assistance (M.A.) and State Disability Assistance (SDA) benefits.

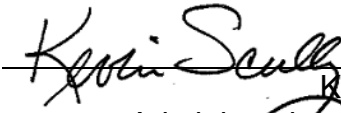
DECISION AND ORDER

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 determination of the Claimant's eligibility for Medical Assistance (MA) based on the February 9, 2012, application for benefits and consider retroactive benefits as of November 1, 2011.
2. Provide the Claimant with a Notice of Case Action (DHS-1605) describing the Department's revised eligibility determination.

3. Issue the Claimant any retroactive benefits he may be eligible to receive, if any.


Kevin Scully
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **10/3/2014**

Date Mailed: **10/3/2014**

KS/las

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:

