

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-007872
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: October 21, 2014
County: Wayne #17

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 21, 2014, from Lansing, Michigan. Claimant is deceased. Claimant died September 25, 2014. Participants on behalf of Claimant included Claimant's authorized representative [REDACTED]. Participants on behalf of the Department of Human Services (Department) included, [REDACTED], Assistance Payments Worker acting as Hearings Facilitator.

ISSUE

Did the Department of Human Services (the Department) properly deny Claimant's application for Medical Assistance (MA-P)?

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 January 6, 2014, Claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
2. On March 6, 2014, the Medical Review Team denied Claimant's application stating that Claimant's impairments lacked duration.
3. On April 28, 2014, the Department caseworker sent Claimant notice that his application was denied.
4. On July 17, 2014, Claimant filed a request for a hearing to contest the Department's negative action.

5. On October 21, 2014, the hearing was held. At the hearing, Claimant's authorized hearings representative waived the time periods and submitted additional medical information.
6. Claimant was a [REDACTED]-year-old [REDACTED] whose [REDACTED] He [REDACTED]. Cause of death is still pending per the [REDACTED].
7. Claimant alleges as disabling impairments: diabetes mellitus type II, gastroparesis, diabetic neuropathy, diabetic retinopathy, degenerative arthritis of the spine, back pain, abdominal pain and poor vision.

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, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Claimants 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. BAM 600.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or Department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance 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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments does not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the Claimant perform Substantial Gainful Activity (SGA)? If yes, the Claimant is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the Claimant have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the Claimant is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).

3. Does the impairment appear on a special listing of impairments or are the Claimant'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. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the Claimant do the former work that he/she performed within the last 15 years? If yes, the Claimant is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the Claimant have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the Claimant are ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, Claimant is not engaged in substantial gainful. Claimant is [REDACTED]. Claimant is not disqualified from receiving disability at Step 1. [REDACTED].

The objective medical evidence on the record indicates that Claimant had a physical examination on [REDACTED]. His blood pressure was 193/97; pulse was 100, temperature 98.8°F. Respiration equal 20, height was 5'6". Weight was 290 pounds. BMI 46.83. Oxygen saturation on room air was 96%. He was oriented to person, place and time. He appeared well developed and well-nourished. His head was normocephalic and atraumatic. His right and left ears were normal. Nose was normal. Oropharynx was clear and moist. The eyes were normal. Pupils were equal, round and reactive to light. The neck had normal range of motion was supple. No tracheal deviation was present. The cardiovascular area had normal rate, regular rhythm, normal heart sounds and intact distal pulses. No murmur was heard. Pulmonary effort was normal in breast sounds were normal. No respiratory distress. He had no wheezes; no rales, Exhibit A4.

The abdomen was soft and bowel sounds are normal. He exhibited no distention. There is generalized tenderness. There was CVA tenderness. There was no rebound and no guarding. In the musculoskeletal area Claimant had normal range of motion. He exhibited no edema and no tenderness. He had no cervical lymphadenopathy. Neurologically he was alert and oriented to person, place and time. He had normal reflexes. No cranial nerve deficit. Coordination was normal. The skin was warm. No rash noted. He had normal mood and affect. Behavior was normal. Judgment and thought content was normal. He was diagnosed with abdominal pain and gastroparesis, Exhibit A5.

A [REDACTED] of the abdomen dated [REDACTED] indicates that Claimant had no evidence of nephrolithiasis for obstructive uropathy. There was no CT evidence of acute intra-abdominal process, Exhibit A9. A [REDACTED] indicates that Claimant was treated for intractable abdominal pain; Claimant was stable for discharge and [REDACTED] and chronic pain management, Exhibit A12. The medical examination report indicates the Claimant's blood pressure was 146/83, his pulse was 102, temperature 97.8°. His respiration was 18. He was 5'6" tall and weighed 195 pounds. His BMI was 47.64 on [REDACTED], Exhibit A22. Claimant was referred for evaluation of depression and suicidal ideation, Exhibit A27. He was alert, oriented and pleasant. He was depressed. His affect was restricted; he had no delusions or hallucinations. He was diagnosed with opiate dependence. Claimant had prominent depression, affect constricted; no suicidal or homicidal ideation. Claimant was cognitively intact, Exhibit A28. An x-ray of the chest indicates that the lungs were clear. There is no consolidation. There is no pleural effusion. Bony thorax is intact. There is no acute process, Exhibit A35. A [REDACTED] indicates that Claimant was diagnosed with uncontrolled diabetes mellitus type II, hypertension, diabetic neuropathy and degenerative arthritis of the spine. His blood pressure was 157/112, Exhibit A49.

At Step 2, Claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that had lasted or was expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that Claimant suffered a severely restrictive physical or mental impairment. Claimant had reports of pain in multiple areas of his body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the Claimant. There are insufficient laboratory or x-ray findings listed in the file to establish disability. The clinical impression was that Claimant was **stable at the time of the medical appointments**. There is no medical finding that Claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, Claimant has restricted himself from tasks associated with occupational functioning based upon his reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that Claimant has met the evidentiary burden of proof can be made.

This Administrative Law Judge finds that the medical record is insufficient to establish that Claimant had a severely restrictive physical impairment. Even the [REDACTED]

Therefore, this The Administrative Law Judge cannot assess accurately whether or not Claimant's medical condition contributed to his death. Claimant's impairments did not meet duration. The evidence indicates that Claimant continued to use opiates, even though the medical reports indicate that the use of opiates would increase the effects of gastroparesis. The [REDACTED]. Therefore, Claimant's application was appropriately denied and is denied at step 2 based upon insufficient evidence. Claimant is disabled for the [REDACTED].

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work)... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/psychiatric evidence in the record indicating Claimant suffers severe mental limitations. There is **no** mental residual functional capacity assessment in the record. There is insufficient evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent Claimant from working at any job. Claimant was oriented to time, person and place during the hearing. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. The evidentiary record is insufficient to find that Claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that Claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If Claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of Claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations. Because of the Claimant's death, sequential evaluation process cannot continue as he can no longer perform his prior work and he has no residual functional capacity based upon the fact that he is deceased.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that Claimant was not eligible to receive Medical Assistance and/or retroactive Medical Assistance for the months [REDACTED] based upon disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has appropriately established on the record that it was acting in compliance with Department policy when it denied Claimant's application for Medical Assistance for the months prior to [REDACTED] and retroactive Medical Assistance benefits based upon disability. The Department has established its case by a preponderance of the evidence. Disability is established in the month of death. Therefore, Claimant is disabled for purposes of disability benefit eligibility in the month of [REDACTED].

Accordingly, the Department's decision is partially REVERSED. The Department is ordered to assess Claimant's eligibility for medical assistance benefits and the month of [REDACTED] and if Claimant is otherwise eligible the Department is ordered to open a Medical Assistance benefits case for the months of [REDACTED].

The Department's decision is partially AFFIRMED for the months prior to [REDACTED] based upon insufficient evidence of disability.



Landis Y. Lain
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 10/23/14

Date Mailed: 10/23/14

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 Claimant;
- 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

LYL/tb

cc:

