

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 14-008199  
Issue No.: 2009; 4009  
Case No.: [REDACTED]  
Hearing Date: October 1, 2014  
County: Clinton

**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 1, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Claimant, his mother [REDACTED] and authorized hearings representative from [REDACTED], [REDACTED]. Participants on behalf of the Department of Human Services (Department) included, [REDACTED], Lead Worker acting as Hearings Facilitator.

**ISSUE**

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

**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 20, 2014, Claimant filed an application for Medical Assistance, State Disability Assistance and retroactive Medical Assistance benefits alleging disability.
2. On May 2, 2014, the Medical Review Team denied Claimant's application stating that Claimant's impairments lacked duration.
3. On May 13, 2014, the Department caseworker sent Claimant notice that his application was denied.

4. On July 22, 2014, Claimant filed a request for a hearing to contest the Department's negative action.
5. On October 1, 2014, the hearing was held. At the hearing, Claimant's authorized hearings representative waived the time periods and submitted additional medical information.
6. Claimant is a 31-year-old man whose date of birth is [REDACTED]. Claimant is 5'11" tall and weighs 145 pounds.
7. Claimant last worked November 1, 2013, in construction.
8. Claimant alleges as disabling impairments: concussion, depression, traumatic brain injury, blind in the left eye, tendinitis, fractured right femur, comprehension and memory loss, paranoia, insomnia, motion sickness, anxiety, depression and posttraumatic stress syndrome.
9. On October 29, 2014, additional medical information was received from [REDACTED].
10. On November 1, 2014, the record was closed.

#### **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).

This Administrative Law Judge did consider the entire record in making this decision.

At Step 1, Claimant is not engaged in substantial gainful activity and has not worked since **2013**. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates that Claimant testified on the record that he lives with his mother in a house. His mother supports him. He is divorced with no children under 18 and no income. He receives the Healthy Michigan Medical Plan as of April 1, 2014. Claimant has no driver's license because he has a prior DUIL. His mother takes him where he needs to go. Claimant cooks in the microwave. Claimant washes dishes. Claimant watches television two hours per day. Claimant testified he can stand for 15 to 20 minutes at a time. He can sit for 30 to 45 minutes at a time. He can walk 1/16 of a mile. He's able to shower but is difficult to get dressed. He is not able to squat down. He can tie his shoes and touch his toes. He has arthritis in his knees and muscle spasms in his back. His hands and arms are fine. He

has ankle problems. He sustained a fractured femur July 31, 2014. The heaviest weight he can carry repetitively is 10 to 20 pounds. Claimant smokes a pack of cigarettes per day. His doctors told him to quit and he is not in a smoking cessation program. He stopped drinking two months before the hearing.

A [REDACTED], medical examination report indicates that Claimant's general appearance is normal. He is blind in the left eye. His respiratory, cardiovascular and abdominal areas were normal. Neurologically he was normal. He was depressed and irritable. He uses crutches due to a bullet in his right knee and he uses the brace. The clinical impression is that he was stable. He can stand or walk less than two hours in an eight hour workday and can sit about six hours in an eight hour workday. He could perform simple grasping, reaching, pushing, pulling and fine manipulating both upper extremities. He can operate foot and leg controls of both feet and legs. He had no mental limitations. He was 5'10" tall and weighed 144 pounds. His blood pressure was 112/68. Exhibit B1 – 2. Claimant has a self-inflicted gunshot wound to the right leg [REDACTED] and was admitted. As of [REDACTED], he was not weight-bearing with crutches.

Claimant sustained a closed head injury [REDACTED], Exhibit 101 – 103, as a result of a motor vehicle accident. He sustained injury that left him blind in his left eye, Exhibit 104. Claimant was diagnosed with posttraumatic stress disorder, closed head injury, depression, blindness in the left eye, and memory changes. His condition was listed in stable, Exhibit 35 – 36. A March 2014 mental status evaluation indicates the Claimant was diagnosed with cognitive disorder, panic disorder, personality changes with anger problems, ETOH abuse and depression with an axis V GAF of 50, Exhibit 35 – 36.

In [REDACTED], Claimant was seen in the emergency Department for alcohol intoxication, overdose of prescription medications and was diagnosed with depression, Claimant Exhibit D. In [REDACTED] Claimant was admitted because of a self-inflicted gunshot to his right distal fibula, Claimant exhibit D.

At Step 2, 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. There is sufficient objective clinical medical evidence in the record that Claimant suffers a severely restrictive physical or mental impairment.

Claimant alleges the following disabling mental impairments: depression, dramatic brain injury, memory loss, paranoia, insomnia, anxiety and suicidal ideation.

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 sufficient objective medical/psychiatric evidence in the record indicating Claimant suffers severe mental limitations. There is sufficient 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. However Claimant has had an overdose of medication at one point in a self-inflicted gunshot wound to the leg which indicates suicidal ideation. The evidentiary record is sufficient to find that Claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that Claimant has met his burden of proof at Step 2.

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.

Claimant last worked [REDACTED] in construction. He had a dirt bike accident [REDACTED] and sustained a traumatic brain injury. His reading comprehension and writing abilities have deteriorated since his head injury and he is dependent upon his mother for many of his daily needs. He continues to experience dizziness and nausea as filing. Expresses frequent anxiety, mood swings, and frequent insomnia. He testified that he hears voices. The evidence indicates the Claimant has had a substantial loss of cognitive and physical abilities due to his head injury. He has changes in personality, disturbance in mood and emotional lability with explosive temper outbursts and impairment in impulse control. He is not currently weight-bearing because of the fractured femur [REDACTED]. He is not disqualified from receiving disability at step 4 because the current evidence on the record indicates that Claimant cannot perform his prior work.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not Claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

At Step 5, the burden of proof shifts to the Department to establish that Claimant does not have residual functional capacity.

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).

Claimant has submitted sufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do light or sedentary tasks if demanded of him.

Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does establish that Claimant has no current residual functional capacity. Claimant is not disqualified from receiving disability at Step 5 based upon the fact that he has established by objective medical evidence that he cannot perform light or sedentary work even with his impairments.

The Department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the Claimant does meet the definition of disabled under the MA-P program and because the evidence of record does establish that Claimant is unable to work for a period exceeding 90 days, the Claimant does meet the disability criteria for State Disability Assistance benefits.

The Department has not 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 State Disability Assistance based upon disability.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Claimant has established on the record that he is disabled for purposes of medical assistance and retroactive medical assistance benefits as of January 2014. He has established that he is disabled for purposes of state disability assistance benefits as of the February 20, 2014 application date.

Accordingly, the Department's decision is REVERSED and the Department is ORDERED to reinstate Claimant's February 20, 2014 application. If Claimant is otherwise eligible, the Department is ORDERED to open a Medical Assistance for Claimant from January 2014 forward and open a State Disability Assistance case from February 20, 2014 forward based upon the substantive information contained in the file.

The Department is also ordered to conduct a medical review of Claimant's disability in November 2015. The Department should check to see if Claimant is in current payment status or not. If the Claimant is in current payment status at the medical review no further action will be necessary. However, if the Claimant is not in current payment status at the medical review, the Department is to obtain updated application forms (DHS49) and obtain updated medical records.

It is ORDERED that the Department shall review this case in one year from the date of this Decision and Order.



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

Date Signed: 11/06/2014

Date Mailed: 11/07/2014

**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 48909-8139

LYL/tb

cc:

