

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

IN THE MATTER OF:

██████████
██████████
██████████
████████████████████

Reg. No.: 14-011203
Issue No.: 2009
Case No.: ██████████
Hearing Date: January 26, 2015
County: Oakland-District 4

ADMINISTRATIVE LAW JUDGE: Alice Elkin

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, an in-person hearing was held on January 26, 2015, from Pontiac, Michigan. Participants on behalf of Claimant included Claimant and ██████████, hearing representative with ██████████, Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (Department) included ██████████, Eligibility Specialist.

During the hearing, the Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. Specifically, the Claimant agreed to attend a consultative medical evaluation scheduled by the Department and to provide additional medical documentation. On March 4, 2015, this office received notification that the Claimant failed to attend and complete the examination. No additional medical documentation was provided by the March 30, 2015 due date of the interim order. The matter is now before the undersigned for a final determination.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA-P) 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. On February 24, 2014, Claimant submitted an application for public assistance seeking MA-P benefits, with request for retroactive coverage to November 2013.
2. On May 10, 2014, the Medical Review Team (MRT) found Claimant not disabled.

3. On May 30, 2014, the Department sent Claimant and the AHR a Benefit Notice denying the application based on MRT's finding of no disability.
4. On August 25, 2014, the Department received the AHR's timely written request for hearing.
5. Claimant alleged physical disabling impairment due to knee injury and degenerative joint disease in the cervical spine.
6. Claimant alleged mental disabling impairments due to bipolar disorder and traumatic brain injury.
7. At the time of hearing, Claimant was [REDACTED] years old with a [REDACTED], birth date; he was [REDACTED]" in height and weighed [REDACTED] pounds.
8. Claimant is a high school graduate with some college.
9. Claimant has an employment history of work as a customer service representative and apartment maintenance worker.

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.

MA-P benefits are available to disabled individuals. BEM 105 (January 2014), p. 1; BEM 260 (July 2014), pp. 1-4. Disability for MA-P purposes is defined as the inability to do any substantial gainful activity (SGA) 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). To meet this standard, a client must satisfy the requirements for eligibility for Supplemental Security Income (SSI) receipt under Title XVI of the Social Security Act. 20 CFR 416.901.

To determine whether an individual is disabled for SSI purposes, the trier-of-fact must apply a five-step sequential evaluation process and consider the following:

- (1) whether the individual is engaged in SGA;
- (2) whether the individual's impairment is severe;
- (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404;
- (4) whether the individual has the residual functional capacity to perform past relevant work; and
- (5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work.

20 CFR 416.920(a)(1) and (4); 20 CFR 416.945.

Step One

As outlined above, the first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971.

In this case, Claimant has not engaged in SGA activity during the period for which assistance might be available. Therefore, Claimant is not ineligible under Step 1 and the analysis continues to Step 2.

Step Two

Under Step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for MA-P means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 12 months. 20 CFR 416.922.

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). 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); see also *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985). Basic work activities means the abilities and aptitudes necessary to do most jobs, including (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v)

responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the *de minimus* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). A claim may be denied at Step 2 if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

In this case, Claimant alleged both physical and mental impairments. The record did not contain any medical documentation concerning mental impairments, and Claimant was advised on the record that the evidence presented was insufficient to establish any mental impairments. An interim order was issued requiring the Department to schedule a mental status examination for Claimant. During the hearing, Claimant was advised that if he did not attend the examination, his application would be denied with respect to the allegations of mental impairments. On March 4, 2015, the undersigned was advised that Claimant had failed to attend a mental status exam appointment on February 13, 2015, and that AHR did not seek to have the appointment rescheduled. When an individual who is applying for benefits fails to take part in a consultative examination or test necessary to determine disability, the individual may be found not disabled. 20 CFR 416.918(a). Because Claimant did not present any medical evidence establishing a severe mental impairment, Claimant is not disabled with respect to any mental impairments.

Claimant also alleged physical impairments due to a torn right knee meniscus and degenerative joint disease. His medical records were limited to his November 28, 2013, hospital emergency visit where Claimant complained of right knee injury following a fall. In his physical exam, the doctor noted that Claimant had right knee swelling, effusion and bony tenderness but normal range of motion, no ecchymosis, laceration. The doctor noted normal patellar mobility and normal meniscus. The doctor also noted tenderness in the bilateral upper thoracic, paraspinal area. An x-ray of the right tibia and fibula showed no fracture or deformity and well-maintained joint spaces. An x-ray of the right knee showed no fracture, no effusion, and soft tissues within normal limits. (Exhibit 5, pp. 24-30.)

The medical evidence presented is insufficient to establish that Claimant has a physical impairment that is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 12 months.

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 **not** disabled for purposes of the MA-P benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED.



Alice Elkin
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **4/15/2015**

Date Mailed: **4/15/2015**

ACE / tlf

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:

[REDACTED]