

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-013451
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: December 18, 2014
County: Lapeer

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, an in-person hearing was held on December 18, 2014, from Lansing, Michigan. Participants on behalf of Claimant included claimant and her Authorized Hearings Representative [REDACTED] of [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist, 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 21, 2014, claimant filed an application for Medical Assistance and retroactive Medical Assistance alleging disability.
- (2) On April 14, 2014, the Medical Review Team denied claimant's application stating that claimant could perform other work pursuant to medical vocational rule 201.28.
- (3) On October 7, 2014, the department caseworker sent claimant notice that her application for disability MA-P was denied.

- (4) On October 16, 2014, claimant filed a request for a hearing to contest the department's negative action.
- (5) Claimant is a 23-year-old woman whose birth date is [REDACTED]. Claimant is 5'5" tall and weighs 155 pounds. Claimant is a high school graduate. Claimant is able to read and write and has basic math skills.
- (6) Claimant last worked November 2013 as Home Health Services Provider.
- (7) Claimant alleges as disabling impairments: gallbladder surgery, above the knee right leg amputation as a result of a shotgun blast injury, and painful prosthesis.

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). 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. 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 do 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 client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
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 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 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. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).

5. Does the client 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 client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since [REDACTED]. Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates claimant testified on the record that she lives with her cousin in an apartment. She is single with no children under 18 and no income. She receives the [REDACTED]. Claimant does have a driver's license and drives one time per week to take the children to school. Claimant does cook 1 to 2 times per week and makes macaroni and cheese and hamburger. Claimant does not grocery shop. Claimant vacuums and does light housekeeping. Claimant watches television one hour per day and use the computer one hour per day. Claimant testified she can stand for 20 minutes at a time it can sit for 20 to 30 minutes at a time. She can walk about 1 mile in the prosthesis but it hurts. Claimant cannot squat or touch her toes. Claimant is able to sit while she takes a shower and she can dress herself. She's able to tie her shoes if she is sitting. She has pain from the prosthesis in her right leg and she has hip and knee pain in her left leg. She walks with a limp. The heaviest weight she can carry is 10 pounds and her hands and arms are fine. Her level of pain on a scale from 1 to 10 without medication is a 10 and with medication equals zero. She takes no medication at this time. She stopped using a cane the last week, but needs it for balance if it is slippery outside. Claimant also testified that she had her gallbladder removed a [REDACTED] as an outpatient. It is getting her to walk and she needs a new prosthesis.

A medical report dated [REDACTED], indicates that claimant underwent open above the knee amputation after failed attempts to salvage the leg after sustaining a shotgun wound to the distal femur, page 11. She had two surgeries in November 2013 and one surgery December 6, 2013

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. This Administrative Law Judge finds that the medical record is sufficient to establish that claimant has a severely restrictive physical impairment.

The analysis would proceed to Step 3 where the medical evidence of claimant's condition does give rise to a finding that she would meet a statutory listing in the code of federal regulations. Claimant's impairments meet listing 1.05 of the Social Security administration this ability rules which indicates at 1.05B. One or both lower extremities at or above the tarsal region, with stump complications resulting in medical inability to use the prosthetic device to him but effectively, as defined in 1.00B2b, which have lasted or expected to last for at least 12 months. In the instant case, claimant does have a right leg prosthesis and testified on the record that it does hurt and that she has

developed some sores and is in need of an additional prosthesis. She does walk with a profound limp.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant does meet Social Security Administration listing 1.05B as of November 2013. Claimant meets the definition of medically disabled under the Medical Assistance Program as of November 2013.

Accordingly, the Department's decision is **REVERSED**. The Department is ORDERED to initiate a review of the January 21, 2014 Medical Assistance and retroactive Medical Assistance application, and if claimant is otherwise eligible, open an ongoing Medical Assistance case for the claimant.

A medical review should be scheduled for 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.



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

Date Signed: 01/06/2015

Date Mailed: 01/06/2015

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 client;
- 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/sw

cc:

