

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-017716
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 11, 2015
County: Oakland (2)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, an in-person hearing was held on February 11, 2015, from Madison Heights, Michigan. [REDACTED] testified and appeared as Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (DHS) included [REDACTED], specialist.

ISSUE

The issue is whether DHS properly denied Claimant's Medical Assistance (MA) eligibility for the reason that Claimant is not a disabled individual.

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 [REDACTED], Claimant applied for MA benefits (see Exhibits 4-23), including retroactive MA benefits from 10/2013 (see Exhibits 24-25).
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 26-27).
4. On [REDACTED] DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant's AHR of the denial.
5. On [REDACTED], Claimant's AHR requested a hearing disputing the denial of MA benefits.

6. On [REDACTED], Claimant failed to participate in the hearing and also failed to establish an absence of substantial gainful activity (SGA).

CONCLUSIONS OF LAW

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. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM) and Department of Human Services Bridges Eligibility Manual (BEM) and Department of Human Services Reference Tables Manual (RFT).

Prior to a substantive analysis, a procedural issue must be addressed. Presented evidence supported a finding that Claimant's hearing request was untimely.

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 (7/2013), p. 5. The request must be received in the local office within the 90 days. *Id.*

It was not disputed that DHS mailed written notice of denial to Claimant's AHR on [REDACTED]. It was also not disputed that DHS received Claimant's hearing request on [REDACTED] 4. Based on undisputed facts, Claimant's hearing request appears to be untimely.

Claimant's AHR contended that a hearing request was emailed on [REDACTED]. Claimant's AHR conceded the hearing request was emailed to an improper email address. Claimant's AHR contended that good cause may be found for the improper hearing request emailing. Claimant's AHR provided testimony that another AHR agency employee was told by an unspecified DHS representative to email the hearing request a non-working email address.

During the hearing, as an experiment, an email was sent to the improper address. After the hearing, an email notifying that the email was undeliverable was received. This consideration is somewhat supportive that Claimant's AHR should have known that Claimant's AHR emailed Claimant's hearing request to an invalid email address. A superior reason exists for not being persuaded by Claimant's AHR's excuse.

The excuse provided by Claimant's AHR was hearsay. The testimony also fails to account for why Claimant's AHR failed to send the hearing request to DHS in a verifiable method (e.g. fax, delivery confirmation, hand-delivered with a DHS office date stamp).

It is found that Claimant's hearing request was untimely. Accordingly, Claimant's hearing request is appropriately dismissed. Despite this finding, a substantive analysis will proceed as if Claimant's hearing request was timely.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 (10/2010), p. 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies:

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

BEM 260 (7/2012) pp. 1-2

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.*, p. 2.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally 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 functionally identical definition of disability is found under DHS regulations. BEM 260 (7/2012), p. 8.

SGA means a person does the following: performs significant duties, does them for a reasonable length of time, and does a job normally done for pay or profit. *Id.*, p. 9. Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute SGA. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. "Current" work activity is interpreted to include all time since the date of application. The 2013 monthly income limit considered SGA for non-blind individuals is \$1,040.

Claimant failed to participate in the administrative hearing. A claimant's testimony is considered the best evidence to determine if employment income was received since the date of MA application. Barring a compelling excuse, a claimant seeking MA benefits based on disability is expected to testify concerning SGA. No compelling reason was provided to excuse Claimant's absence and lack of testimony concerning SGA.

Claimant's AHR requested an extension of the record to obtain an affidavit from Claimant concerning his current and previous employment history. Claimant's AHR's request was denied. An affidavit does not allow for Claimant to be questioned in a hearing setting about written employment information.

A hearing packet almost always includes a Medical-Social Questionnaire. Among other items, the form asks clients about their previous and current work history. It is common for clients to testify to having jobs that were not previously listed on their written statement. Written statements of work history are typically unreliable. There is no reason to expect Claimant to produce a particularly reliable written statement of employment history while failing to appear for hearing questioning.

Claimant's failure to participate in the hearing is deemed to be insufficient evidence of an absence of SGA. Accordingly, Claimant is not disabled and it is found that DHS properly denied Claimant's MA benefit application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied Claimant's MA benefit application dated [REDACTED], including retroactive MA benefits form 10/2013, based on a determination that Claimant is not disabled. The actions taken by DHS are **AFFIRMED**.



Christian Gardocki
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/17/2015**

Date Mailed: **2/17/2015**

CG / hw

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:

