

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

IN THE MATTER OF:

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Reg. No.: 14-019637
Issue No.: 2009
Case No.: ██████████
Hearing Date: June 01, 2015
County: Macomb-District 20 (Warren)

ADMINISTRATIVE LAW JUDGE: Alice C. 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 June 1, 2015, from Warren, Michigan. Claimant was not present at the hearing. ██████████, hearing coordinator with ██████████ ██████████, Claimant's authorized hearing representative (AHR), participated in the hearing on Claimant's behalf. Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Hearing Facilitator. ██████████, Department intern, was present for the hearing but did not participate.

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 June 20, 2013, Claimant applied for MA-P benefits. The AHR was identified as Claimant's authorized representative in the application.
2. On October 16, 2013, the Medical Review Team (MRT) found Claimant not disabled (Exhibit D, reconstructed DHS-49-A).
3. On October 18, 2013, the Department sent Claimant a Notice of Case Action denying the application based on MRT's finding of no disability (Exhibit B).
4. On November 21, 2013, the Department faxed the AHR a denial of the DHS 2565, facility admission notice, the AHR had submitted to the Department.

5. On February 14, 2013, the Department received Claimant's written request for hearing, appointing the AHR as his authorized hearing representative (Exhibit A).
6. Claimant alleged physical disabling impairment due to chronic kidney disease and heart disease.
7. Claimant was not present at the hearing.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and 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 Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

As a preliminary matter, the issue of the timeliness of the AHR's hearing request was addressed. The Department asserted that the hearing request filed on February 14, 2014, was not timely filed within 90 days of the October 18, 2013, Notice of Case Action sent to Claimant denying his June 20, 2013, MA-P application based on MRT's finding that he was not disabled. See BAM 600 (July 2013), p. 5. It is noted that Claimant filed the hearing request, and the hearing request is not timely filed within 90 days of the date he received notice of the denial. However, at the hearing, the Department acknowledged that it was aware that the AHR was Claimant's authorized representative at the time the Notice of Case Action was sent but could not verify that a notice denying Claimant's application was sent to the AHR. A client's authorized representative is entitled to notice concerning the client's cases. BAM 110 (July 2013), p. 9. The AHR testified that it was not aware that Claimant's application was denied until November 21, 2013, when it received a faxed denial of the DHS-2565 facility admission notice. Although Claimant signed the hearing request, he authorized his authorized representative to act as his hearing representative. Because the Department could not establish that it notified Claimant's authorized representative (and AHR) of the denial of Claimant's MA application prior to November 21, 2013, it is found that the AHR first received notice of the denial on November 21, 2013. Because the February 14, 2014, request for hearing was timely filed within 90 days of November 21, 2013, it is found that the hearing request is timely. Therefore, the hearing proceeded to address the

merits of Claimant's hearing request concerning whether the Department acted in accordance with policy when it denied his MA-P application.

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.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility 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, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. 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). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

In this case, the AHR disputes MRT's finding that Claimant did not satisfy the 12-month duration requirement. The 12-month duration requirement is evaluated at Step 2 of the sequential analysis. 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. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Claimant did not appear at the hearing. Therefore, he could not testify regarding his current work activity. Although the AHR asserted that Claimant was being treated in [REDACTED] for kidney and heart issues, the same medical issues leading to the June 2013 hospitalization that resulted in the MA-P application, there was no evidence to support the AHR's testimony that Claimant was being treated for any medical conditions or that he was not currently employed. There is no documentation in the medical file concerning Claimant's employment status. In the absence of any evidence concerning Claimant's employment status from the date of application to the date of the hearing, Claimant has failed to meet his burden of showing that he has not engaged in SGA activity during the period for which assistance might be available. Because Claimant cannot satisfy Step 1, he is deemed not disabled, regardless of medical condition, age, education, or work experience. No further analysis is required.

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Claimant **not** disabled for purposes of the MA-P benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **6/5/2015**

Date Mailed: **6/5/2015**

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]