

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-105
Issue No.: [REDACTED]
Case No.: [REDACTED]
Hearing Date: February 11, 2014
County: Wayne-31

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 February 11, 2014, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED]

ISSUE

Did the Department properly deny Claimant's Medical Assistance application?

FINDINGS OF FACT

1. Claimant applied for MA-P on April 24, 2013.
2. The Medical Review Team denied the application on August 22, 2013.
3. Claimant filed a request for hearing September 12, 2013, regarding the MA denial.
4. A telephone hearing was held on February 11, 2014.
5. On October 30, 2013, the State Hearing Review Team denied the application because the medical evidence of record indicates that the Claimant retains the capacity to perform light work.
6. Claimant is 5' 7" tall and weighs 210 pounds.
7. Claimant is 44 years of age.
8. Claimant's impairments have been medically diagnosed as herniated discs, back pain, right shoulder pain.
9. Claimant has the following symptoms: pain, fatigue and muscle spasms.
10. Claimant completed a 4 year college degree.

11. Claimant is able to read, write, and perform basic math skills.
12. Claimant is not working. Claimant last worked in February 2012, as a salesperson.
13. Claimant lives alone.
14. Claimant testified that she cannot perform some household chores.
15. Claimant takes the following prescribed medications:
 - a. Flexeril
 - b. Motrin
 - c. Codeine
16. Claimant testified to the following physical limitations:
 - i. Sitting: 2-3 minutes
 - ii. Standing: 5 minutes
 - iii. Walking: 50-100 feet
 - iv. Bend/stoop: difficulty
 - v. Lifting: 10-15 lbs.
 - vi. Grip/grasp: no limitations
17. Claimant testified to experiencing pain, at a high level of 7 on an everyday basis with some pain always present at a low level of 6.
18. In a Medical Examination Report dated July 9, 2013 Claimant was found to be capable of lifting less than 10 pounds occasionally, and standing/ walking less than 2 hours in an 8 hour day. No limitations were listed for Claimant's ability to sit.
19. An MRI of Claimant's thoracic spine on June 27, 2013 showed the following under impression: "Right paracentral disc herniations at T7-T8 and T8-T9."
20. An MRI of Claimant's cervical spine on June 27, 2013 showed the following under impression: "Large right foraminal disc herniation at C6-C7 contributes to high grade right sided neural foraminal narrowing."
21. An MRI of Claimant's lumbar spine on June 2, 2013 showed the following under impression: "Right L3- L4 and L4-L5 paracentral/fo foraminal disc herniations contribute to encroachment of the right epidural space and proximal neural foramen at these two levels. 2. Superimposed annular tear at L4-L5."
22. Claimant's physician [REDACTED] completed a Disability Certificate dated October 10, 2013 that states "It is my opinion that the patient is disabled from work/ other from 6/6/13 to 12/5/13." No explanation for this opinion was given.

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-P) 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 administers the MA-P 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 uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the MA-P 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.

Federal regulations require that the Department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"Disability" is:

...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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is, or is not, disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, the Claimant is not working. Therefore, the Claimant is not disqualified at this step in the evaluation.

The second step to be determined in considering whether the Claimant is considered disabled is the severity of the impairment. In order to qualify the impairment must be considered severe, which is defined as an impairment which significantly limits an individual's physical, or mental, ability to perform basic work activities. Examples of these include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, 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).

In this case, the Claimant's medical evidence of record supports a finding that Claimant has significant physical and mental limitations upon Claimant's ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling. Medical evidence has clearly established that the Claimant has an impairment (or combination of impairments) that has more than a minimal effect on the Claimant's work activities. See Social Security Rulings: 85-28, 88-13, and 82-63.

In the third step of the analysis, the trier of fact must determine if the Claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Claimant's medical record does not support a finding that the Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR Part 404, Part A. Listings 1.02 and 1.04 were considered.

The person claiming a physical, or mental, disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged. 20 CFR 416.913. A conclusory statement by a physician, or mental health professional, that an individual is disabled, or blind, is not sufficient without supporting medical evidence, to establish disability. 20 CFR 416.927.

The fourth step of the analysis to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the Claimant from doing past relevant work. In the present case, the Claimant's past employment was as a phone salesperson. Working as a phone sales person, as described by

Claimant at hearing, would be considered sedentary work. The Claimant's impairments would not prevent her from doing past relevant work. Claimant's testimony regarding her physical limitations was not supported by substantial medical evidence. In the disability certificate completed by [REDACTED] he states a conclusion but does not give an explanation, it also does not find that Claimant is unable to work for one year from the date of application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is NOT medically disabled for the purposes of MA- P eligibility.

Accordingly, the Department's decision is hereby **AFFIRMED**.



Aaron McClintic
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 6, 2014

Date Mailed: March 6, 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 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.

2014-105/AM

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 48909-07322

AM/nk

cc:

