

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

IN THE MATTER OF THE CLAIM OF:

[REDACTED]

Reg No.: 2014-22993
Issue No.: 2009;
Case No.: [REDACTED]
Hearing Date: June 12, 2014
County: Wayne (76)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a three way telephone hearing was held from Detroit, Michigan on June 12, 2014. The Claimant did not appear; however, his Authorized Hearing Representative ("AHR"), [REDACTED], [REDACTED], appeared on his behalf. [REDACTED] Specialist, appeared on behalf of the Department of Human Services ("Department").

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") benefit program and the State Disability Assistance (SDA) 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. The Claimant did not participate in the hearing process.
2. The Notice of hearing sent to the Claimant was not returned to MAHS or the Department.
3. The Claimant/AHR submitted an application for public assistance seeking MA-P benefits on April 1, 2013 and Retro-MA-P benefits for January 2013.

4. On September 19, 2013, the Medical Review Team ("MRT") found the Claimant not disabled.
5. On September 30, 2013 the Department issued a Notice of Case Action denying the Claimant's applications.
6. On January 17, 2014, the Department received the Claimant's AHR's request for hearing.
7. On March 7, 2014, the State Hearing Review Team ("SHRT") found the Claimant not disabled.
8. At the hearing, the Claimant's AHR submitted additional medical evidence and a DHS 49 from the Claimant's doctor.
9. An Interim Order was issued on June 12, 2014 transmitting the additional medical evidence to SHRT. On July 31, 2014, the SHRT found the Claimant not disabled.

CONCLUSIONS OF LAW

The Medical Assistance program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services, formerly known as the Family Independence Agency, 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 Bridges Reference Manual ("RFT").

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). 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 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). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(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 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). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv).

In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). 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). An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i). Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done (or intended) for pay or profit. 20 CFR 416.910(a)(b). Substantial gainful activity is work activity that is both substantial and gainful. 20 CFR 416.972. Work may be substantial even if it is done on a part-time basis or if an individual does less, with less

responsibility, and gets paid less than prior employment. 20 CFR 416.972(a). Gainful work activity is work activity that is done for pay or profit. 20 CFR 416.972(b).

In the record presented, the Claimant did not appear. Accordingly, the Claimant's current employment status, ability to work, and/or attempts of work is unknown. At the request of the Claimant's AHR, the Department provided an SOLQ and an Income Search which noted that the Claimant had reported wages in the second and third quarter of 2013. It is also noted that the Claimant received his last Unemployment Compensation check as of September 2013. Other than this information, no further evidence was received to demonstrate employment. The SOLQ and the earnings search are attached to this Decision, as it cannot be determined whether the information was made available to the Claimant's AHR. After consideration of this information, it is determined that the determination as to whether Claimant is currently employed cannot be made. The best evidence of the work status information can only be provided by the Claimant who was not present at the hearing after due notice of the hearing was provided. Additionally, in September 2013, the Claimant was still receiving unemployment benefits which requires the recipient of these benefits certify that they are work ready. Under these facts, the Claimant cannot be found disabled for purposes of the MA-P program and is therefore found ineligible at Step 1 with no further analysis required.

It is also determined upon further review of the hearing packet admitted as Exhibit 1, that the hearing request filed in this matter was not filed within 90 days of the Notice of Case Action as required by BAM 600 (7/1/14).

Regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in Mich Admin Code, R 400.901 through R 400.951. Rule 400.903(1) provides as follows:

An opportunity for a hearing shall be granted to an applicant who requests a hearing because [a] claim for assistance is denied or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by a Department action resulting in suspension, reduction, discontinuance, or termination of assistance.

A request for hearing must be in writing and signed by the claimant, petitioner, or authorized representative. Mich Admin Code, R 400.904(1). Moreover, the Department of Human Services Bridges Administrative Manual (BAM) 600 (7/1/14), p. 6, provides in relevant part as follows:

The client or authorized hearing representative has 90 *calendar days from the date of the written notice of case action to request a hearing*. The request must be received anywhere in DHS within the 90 days. [Emphasis added.]

The Department's Notice of Case Action as testified to by the Department was dated September 30, 2013. However, Claimant's AHR did not file a request for hearing to contest the Department's action until January 17, 2014.

Claimant's hearing request was not timely filed within ninety days of the Notice of Case Action and is, therefore, **DISMISSED** for lack of jurisdiction.

Accordingly, the Claimant is found not disabled and, thus, ineligible at Step 1 with no further analysis required.

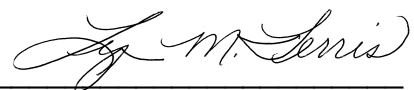
DECISION AND ORDER

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

Accordingly, it is ORDERED:

The Department's determination is AFFIRMED.

The Claimant's hearing request is also DISMISSED for lack of jurisdiction.



Lynn M. Ferris
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: August 26, 2014

Date Mailed: August 26, 2014

NOTICE: Administrative Hearings 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. Administrative Hearings will not order a rehearing or

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reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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cc:



Attachment, Exhibit 3