

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

IN THE MATTER OF:



Reg. No.: 2014 31036
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: July 2, 2014
County: Wayne County DHS (19)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 three way telephone hearing was held on July 2, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. A witness, [REDACTED] also appeared for the Claimant. [REDACTED] of [REDACTED], the Claimant's Authorized Hearing Representative, also appeared. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Medical Contact Worker.

ISSUE

Whether the Department properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) program?

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 September 17, 2013, Claimant applied for MA-P and retro MA-P (August 2013).
2. On December 6, 2013, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant's AHR a notice of the Notice of Case Action dated December 13, 2013, denying the Claimant MA-P application.

4. On March 4, 2014, Claimant's AHR submitted to the Department a timely hearing request.
5. May 9, 2014, the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.
6. Claimant at the time of the hearing was 54 years old, with a birth date of [REDACTED] [REDACTED] Claimant was 5' 11" and weighed 200 pounds.
7. Claimant completed the [REDACTED] grade and does not read or write English. The Claimant can read and write Spanish. The Claimant indicated that his math skills were limited.
8. Claimant has employment history working for as manual laborer as a brick layer, also landscaping work including driving of tractors, moving trees, and general construction work involving construction of golf courses, football fields highway medians and general landscaping.
9. Claimant alleges physical disabling impairments due to a brain tumor post surgery and 28 radiation treatments, dizziness, headaches and physical instability. The Claimant is restricted from driving by his doctor.
10. The Claimant has not alleged mental disabling impairments.
11. The Claimant's impairments have lasted or are expected to last for 12 months duration or more.

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.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. 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 are 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.

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 symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence

establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the Claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the Claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the Claimant's residual functional capacity. 20 CFR 404.1520(e). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, the trier must consider all of the Claimant's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the Claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the Claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the Claimant has the residual functional capacity to do his/her past relevant work, then the Claimant is not disabled. If the Claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Claimant alleges physical disabling impairments due to a brain tumor post surgery and 28 radiation treatments, dizziness, headaches and physical weakness and instability.

The Claimant has not alleged mental disabling impairments.

A summary of the Claimant's medical evidence presented at the hearing and the new evidence presented follows.

The Claimant underwent brain surgery, a craniotomy on August 21, 2013 for a malignant tumor resection. The biopsy was low-grade glioma (astrocytoma), (oligodendroglioma). At the time of hospitalization, the Claimant had experienced

sudden onset of dizziness, as well as ringing in his ears and feeling like he was going to pass out with some blurred vision. Claimant was discharged on August 29, 2013.

An MRI of the brain post surgery and removal of tumor was conducted on August 22, 2013. There was residual mass effect and midline shift.

The Claimant was seen for follow-up post brain surgery on December 17, 2013. At the time of the follow-up, the Claimant had completed radiation therapy (November 21, 2013) after undergoing craniotomy for tumor resection due to oligoastrocytoma, Grade II. At exam, Claimant expressed fatigue, no problems with weakness, numbness or tingling or seizures. Headaches were reported with dizziness and passing out a little. A new MRI of brain was to be taken and follow up with another doctor regarding starting chemotherapy.

Post surgery, the Claimant was deemed high risk due to his age, over 40, preoperative neurological deficit and possible residual disease.

On October 8, 2013, the Claimant was seen by his neurosurgeon, who imposed no restrictions but did restrict the Claimant from driving, and evaluated the patient as stable from a neurosurgery standpoint.

The Claimant was seen on December 18, 2013 by his attending physician. At the time of the exam, the patient stated he was doing relatively well, although has headaches in morning as being 5-6/10. Seizures were denied. Patient denied numbness, weakness, shortness of breath, chest pain, abdominal pain or bone pain. The doctor advised no driving until MRI results were available.

The Claimant was also seen for a Consultative Examination on November 15, 2013. The examiner noted occasional headaches, and further reported seizure activity. Gait was normal. The Prognosis was guarded. The conclusion was brain tumor, glioma or cancer of the brain; prognosis for glioma is poor. Mild arthritis affecting both knees. The examiner concluded that the Patient is disabled for any kind of work.

The Claimant was seen on December 20, 2013 for a Consultative Examination performed by an internist. The examiner noted complaints of mild impairment of balance, and use of cane. No visual, hearing problems, or speech difficulty or significant impairment of higher intellectual functioning. The doctor noted that gait was minimally unsteady. Mild weakness and very mild decrease on pin prick and vibratory sensation on right upper and lower limbs. Tendon reflexes are decreased on right side. The current abilities noted that squat and arising from squat and climbing stairs were affected. (See pp 4 re note Exhibit 1. The Claimant could not heel toe or tandem walk and gait stability was also noted. No walking aids were indicated as necessary. The lumbar spine range of motion was not tested as the notes indicated that the Claimant gets dizzy.

At the hearing, the Claimant also credibly testified that his treating Doctor had still prohibited him from driving. Claimant is now one-year post surgery. The Claimant credibly testified that his physical abilities are seriously limited, and that he could stand for 30 minutes, and still gets dizzy even while sitting for long periods of time, and that his legs are weak. He uses a cane and can walk only around the block. He expressed clearly that he suffers headaches and cannot carry anything heavy due to right sided weakness, including his right hand. The Claimant is right handed.

Here, Claimant has satisfied requirements as set forth in steps one, two of the sequential evaluation as he is not employed and is not currently working, and his impairments have met the Step 2 severity requirements.

In addition, the Claimant's impairments are found to meet the equivalent of Listing 13.13 Nervous System. **13.13 Nervous system.** (See 13.00K6.)

A. Central nervous system malignant neoplasms (brain and spinal cord), as described in 1 or 2:

1. Highly malignant tumors, such as medulloblastoma or other primitive neuroectodermal tumors (PNETs) with documented metastases, grades III and IV astrocytomas, glioblastoma multiforme, ependymoblastoma, diffuse intrinsic brain stem gliomas, or primary sarcomas.

2. Progressive or recurrent following initial antineoplastic therapy.

OR

B. Peripheral nerve or spinal root neoplasm, as described in 1 or 2:

1. Metastatic.

2. Progressive or recurrent following initial antineoplastic therapy.

At the hearing, the Claimant also credibly testified that his treating doctor had still prohibited him from driving. Claimant is now one-year post surgery. The Claimant credibly testified that his physical abilities are seriously limited, and that he could stand for 30 minutes, and still gets dizzy even while sitting for long periods of time, and that his legs are weak. He uses a cane and can walk only around the block. He expressed clearly that he suffers headaches and cannot carry anything heavy due to right sided weakness, including his right hand. The Claimant is right handed.

Based upon these functional limitations, the Consultative Examiners report of November 2013, and the Stage II diagnosis of the tumor, and the medical evidence presented, it is determined that the Claimant has demonstrated that Listing 13.13 or its medical equivalent is met and, therefore, is found disabled at Step 3 with no further analysis required.

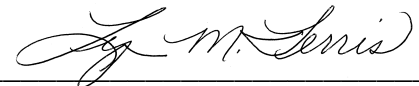
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of August 2012.

Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department shall process the September 17, 2013 application for Medical Assistance and retroactive application for Medical Assistance (August 2013), and shall determine the Claimant's non-medical eligibility for benefits including Michigan residency.
2. The Department shall complete a review of this case in September 2015.



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

Date Signed: September 5, 2014

Date Mailed: September 5, 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.

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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 48909-07322

LMF/tm

cc:

