

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2014-33186  
Issue No(s): 2009  
Case No.: [REDACTED]  
Hearing Date: August 13, 2014  
County: Ingham County DHS

**ADMINISTRATIVE LAW JUDGE:** Colleen Lack

**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 August 13, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], the Claimant, and [REDACTED], Authorized Hearing Representative. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Hearing Facilitator.

**ISSUE**

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) 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 28, 2013, Claimant applied for Medicaid (MA-P) and retroactive MA-P.
2. On December 13, 2013, the Medical Review Team (MRT) found Claimant not disabled.
3. On December 26, 2013, the Department notified Claimant of the MRT determination.
4. On March 14, 2014, the Department received Claimant's timely written request for hearing.
5. On May 28, 2014, the State Hearing Review Team (SHRT) found Claimant not disabled.
6. Claimant alleged disabling impairments including right leg compartment syndrome and leg amputation, severe manic depression, ADD, ODD, and bipolar disorder.
7. At the time of hearing, Claimant was 29 years old with an [REDACTED], birth date; was 5'10" in height; and weighed 160 pounds.

8. Claimant completed the 9<sup>th</sup> grade, obtained a GED, and has a work history including part time painting and light duty porter.
9. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

### **CONCLUSIONS OF LAW**

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

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 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, 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 applicant 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 416.945(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). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity. The current light duty porter work while incarcerated would not be expected to generate earnings sufficient to be considered substantial gainful activity. Therefore, Claimant is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include:

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

*Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a Claimant's age, education, or work experience, the impairment would not affect the Claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Claimant alleges disabling impairments including right leg compartment syndrome and leg amputation, severe manic depression, ADD, ODD, and bipolar disorder.

Claimant was hospitalized April 21, 2013, for cocaine overdose and encephalopathy. Claimant had swallowed a bag when he was being arrested for a domestic dispute.

Claimant was hospitalized June 13, 2013 to July 9, 2013, for multiple injuries, compartment syndrome of lower right leg, cocaine overdose, encephalopathy, electrolyte abnormality, rhabdomyolysis, acute kidney injury, myoglobinuria, assault, toxic noninfectious hepatitis, hemodialysis patient, status post amputation of leg, drug overdose, PCP abuse, cocaine abuse, hypertension, anemia, uremia of renal origin, hypophosphatemia, history of blood transfusion, DVT of upper extremity, TBI, seizure disorder, status post above the knee amputation unilateral, hyponatramia, and hyperkalemia. On June 20, 2013, Claimant underwent a right below the knee amputation. On June 24, 2013, Claimant underwent a revision surgery for the right below the knee amputation. On July 3, 2013, Claimant underwent above the knee amputation. It is noted that the psychiatric portion of the discharge exam was normal.

Claimant was hospitalized July 19, 2013, for resolving acute kidney injury, status post above the knee amputation of leg, drug abuse, hypertension, DVT of upper extremity, TBI, seizure disorder, hypercalcemia, and decubitus ulcer of coccygeal region stage 3.

Claimant was seen in the emergency department on August 5, 2013 for leg pain status post above the knee amputation.

Claimant was seen in the emergency department on August 11, 2013 for limb pain and phantom limb pain.

An August 13, 2013, orthopedic record indicates a plan for Claimant to get into a prosthesis. A DHS-49 Medical Examination Report was completed on August 14, 2013, indicating Claimant was unable to perform any of the listed physical activities.

Claimant was seen in the emergency department on August 15, 2013 for stump pain.

Claimant was seen in the emergency department on August 19, 2013 for a complaint of altered mental status and status post amputation of leg. The records indicate the altered mental status occurred when Claimant was arrested pursuant to an outstanding warrant when he went to fill a prescription.

Department of Corrections Records from November 2013 to May 2014 were submitted. Claimant was being treated for multiple conditions, including phantom pains, hypertension, above the knee amputation status, and in the earlier records, epilepsy/seizures. A May 27, 2014, office visit record, in part, noted Claimant was observed to be doing dips while on the yard using his wheelchair arms as bars. A May 29, 2014 record indicate a final test socket for a prosthetic that was expected to be fitted in 2 weeks and an expected need for physical therapy for gait training to use first prosthetic leg.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Claimant has presented medical evidence establishing that he does have some limitations on the ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted, or can be expected to last, continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, 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. The evidence confirms recent diagnosis and treatment of multiple conditions, including cocaine overdose and encephalopathy, above the knee amputation of lower right leg, acute renal failure, and hypertension.

Based on the objective medical evidence, considered listings included: The medical evidence was sufficient to establish that listing 1.05B, based on the June 2013 injury with subsequent amputation of the right lower leg and not having a prosthetic until July 2014. Accordingly, the Claimant is found disabled for a closed period of June 2013 to July 2014.

However, the medical records were not sufficient to establish disability for any requested retroactive months from the June 28, 2014 MA application. The only submitted medical evidence for that period was partial records from the April 21, 2013, hospitalization for cocaine overdose and encephalopathy. Those medical records are not sufficient to establish that any listing was met before June 2013 nor were they sufficient to establish disability at Steps 4 or 5 for any retroactive months. Similarly, disability cannot be established after July 2014. Claimant's testimony indicated he

received the prosthetic in July 2014, and had been cleared to work 8 hours shifts as a light duty porter while incarcerated. Claimant testified he had been working for two weeks. As noted above, the expected actual earnings from the porter work would not sufficient to be considered substantial gainful activity. Claimant testified he typically only works about 2 hours. However, the Claimant's testimony also indicated he was given a medical clearance to work as light duty porter, 8 hour shifts, with a lifting limitation of 10 pounds. Based on the lifting limitation, Claimant would be found to have a sedentary residual functional capacity. There was no past full time work to consider at Step 4, but Claimant would be found not disabled at Step 5 under Medical-Vocational Rule 201.27 given his age, education, and residual functional capacity.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled for purposes of the MA benefit program for a closed period of June 2013 to July 2014.

**DECISION AND ORDER**

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. Initiate a review of the application dated June 28, 2013, if not done previously, to determine Claimant's non-medical eligibility for a closed period of June 2013 to July 2014. The Department shall inform Claimant of the determination in writing.
2. The Department shall supplement for lost benefits (if any) that Claimant was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.



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Colleen Lack  
Administrative Law Judge  
for Nick Lyon, Interim Director  
Michigan Department of Human Services

Date Signed: January 26, 2015

Date Mailed: January 26, 2015

**NOTICE OF APPEAL:** A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides or has its principal place of business in the State, 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 48909-07322

CL/hj

cc:

