

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

IN THE MATTER OF:

[REDACTED]

Recon Reg. No.: 2014-36159
Old Reg. No.: 2013-61812
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 5, 2014
County: Ingham

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

RECONSIDERATION 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 5, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Michelle Johnson.

The original hearing, **Register #2013-61812** was held by Administrative Law [REDACTED]. This Reconsideration Hearing Decision and Order was completed by Administrative Law [REDACTED]. Lain after considering the entire record.

ISSUE

Did the Department of Human Services (the Department) properly deny Claimant's application for Medical Assistance (MA-P)?

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 November 19, 2012, Claimant filed an application for Medical Assistance benefits alleging disability.
2. On April 13, 2013, the Medical Review Team denied Claimant's application stating that Claimant's impairments were non-exertional.
3. On April 26, 2013, the Department caseworker sent Claimant notice that his application was denied.

4. On July 24, 2013, [REDACTED] filed a request for a hearing to contest the Department's negative action. [REDACTED] alleged in a request for hearing that Claimant died on June 1, 2013 and the cause of death is still pending. The Claimant was previously hospitalized at the [REDACTED] [REDACTED] from [REDACTED] for bipolar disorder.
5. On September 16, 2013, the States Hearing Review Team again denied Claimant's application stating that drug and alcohol abuse is present and material to this determination pursuant to public law 104 – 121.
6. Claimant was a [REDACTED]-year-old [REDACTED] whose [REDACTED]
7. Claimant alleges as disabling impairments: bipolar disorder, marijuana dependence, opioid dependence in early remission, cocaine dependency in remission, narcissistic personality disorder with an antisocial features and attention deficit hyperactive disorder.
8. The hearing was held on [REDACTED].
9. On February 11, 2014, Administrative Law Judge [REDACTED] issued a hearing decision and order stating that disability was not established and upholding the Department's denial of Claimant's application for Medical Assistance eligibility.
10. On [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] filed a request for a rehearing/reconsideration stating that the ALJ erred in not allowing [REDACTED] as authorized personal representative of the estate of [REDACTED] to provide a complete and total record as is required per CFR 431.242.
11. On [REDACTED] [REDACTED] [REDACTED], supervising Administrative Law Judge [REDACTED] approved Claimant's request for a reconsideration stating that the assigned Administrative Law Judge would review the case file, all exhibits, the hearing record, applicable statutory or policy provisions and a decision and order of reconsideration would be generated.
12. On [REDACTED] [REDACTED], the reconsideration was assigned to Administrative Law Judge [REDACTED].

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). Claimants 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) 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 of Human Services (DHS or Department) administers the MA 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).

In the instant case, [REDACTED] was not originally an authorized representative for Claimant. There is no evidence in the file that [REDACTED] was an authorized representative for Claimant on the date of application. There is no Authorization to Represent signed by the Claimant before his death on [REDACTED] in the file. Therefore, [REDACTED] would not have been his attorney of record and would not have been able to represent him for the hearing without getting probate court permission.

An authorization to represent a person may be revoked at any time by the person who gave the authorization. When the person who gave the authorization dies, the authorization ends at the time of the death. A dead person can neither give nor revoke, nor affirm authorization. There is no such thing as authorization to act for a dead person. After death, the person does not exist as a legal entity so no one can represent the person. This is Michigan law, MCL 700.497 and MCL 700.5504.

An authorized hearings representative is the person who stands in for or represents the Claimant in the hearings process and has the legal right to do so. This right comes from one of the following sources:

- . written authorization, signed by the Claimant, giving the person authority to act for the Claimant in the hearings process.
- . court appointment as a guardian or conservator
- . the representative status as a legal parent of a minor child
- . the representative status of an attorney at law for the Claimant, and

For MA only:

- . the representative status as the Claimant's spouse or the deceased Claimant's widow or widower, only when no one else has authority to represent the Claimant's interests in the hearings process. An authorized hearing representative has no right to a hearing, but

rather exercises the Claimant's right. Someone who assists, but does not stand in for or represent the Claimant in the hearings process need not be an authorized hearing representative. Stands in for means the authorized hearing representative does whatever the Claimant could do if the Claimant were not represented. (BPG Glossary, p. 4)

An estate of a dead person may be created to handle the remaining business or financial concerns that were outstanding at the time of the person's death. Only a probate court can create a decedent's estate. The court will also appoint someone to act as a personal representative of the estate. For the Medicaid program only, a widow or widower may act as a representative on the Medicaid plan without probate court authorization. There is no signed authorization from a widow or widower to act that claimant's behalf. [REDACTED] could not provide a probate court order or court-issued letter of authority naming them or another person as a personal representative of the claimant's estate until [REDACTED] [REDACTED]. Therefore, the request for administrative hearing must be DISMISSED.

According to [REDACTED], Claimant [REDACTED]. [REDACTED] filed a request for hearing on July 24, 2013. [REDACTED] did not become a personal representative for the decedent until September 12, 2013 in Ingham County probate court. [REDACTED] would not have had standing or been eligible to file a request for hearing on Claimant's behalf until [REDACTED] which would've been well past the 90 day timeliness standards since the notice of denial of eligibility was issued on [REDACTED] when Claimant was still alive. The notice of denial did not return to the Department as undeliverable. [REDACTED]' request for a hearing on behalf of Claimant is hereby DISMISSED because [REDACTED] did not have authorization to act on behalf of the deceased within the 90 day period. [REDACTED] did not have standing to do so when it filed a request for hearing on claimant's behalf on [REDACTED].

In the alternative, if the authorization to represent signed [REDACTED], stands as valid, this Administrative Law Judge will proceed to make a determination on the merits of the case.

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance 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

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 is 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.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments does not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

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

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

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).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the Claimant perform Substantial Gainful Activity (SGA)? If yes, the Claimant is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the Claimant have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the Claimant is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the Claimant's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the

listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).

4. Can the Claimant do the former work that he/she performed within the last 15 years? If yes, the Claimant is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the Claimant have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the Claimant are ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, Claimant is not engaged in substantial gainful activities. Claimant is alleged to be [REDACTED] as of [REDACTED]. According to documentation in the file Claimant had not worked since [REDACTED]. Claimant is not disqualified from receiving disability at Step 1. Disability is established for the [REDACTED].

The objective medical evidence in the file indicates that Claimant last worked in [REDACTED] in customer service. He had also been employed as a lawn care general laborer and dishwasher, page 25. A [REDACTED], indicates the Claimant was 69.5 inches tall and weighed 180 pounds. His BMI was 26.2. His blood pressure was 130/74. His pulse was 64 bpm. Respiratory rate was 20. His HEENT was normal. His neck was supple. His lungs were clear. Cardio vascular have had regular rate and rhythm with no murmur. The abdomen was soft. He had a healed scar on the right-hand, post drainage of abscess. He was alert and oriented times three. He was very anxious. He had needle marks in the brachial fossa, page 29. A [REDACTED], carefree medical report indicates the Claimant was diagnosed with bipolar affective disorder, matter manic, moderate degree and transient arthropathy involving shoulder region, page 31. An [REDACTED], discharge summary indicates that Claimant was diagnosed with right hand abscess/cellulitis, bipolar disorder and history of intravenous drug use, page 42. Claimant was in a substance rehab program and was clean for nine months. He was counseled because of IV drug use, page 43.

A [REDACTED], independent evaluation indicates the Claimant was diagnosed with bipolar disorder, attention deficit hyperactive disorder, marijuana dependence, opiate dependence in early remission, cocaine dependency remission, the narcissistic personality disorder with antisocial features and that Claimant would be incapable handling of potential monetary benefits should they be awarded, page 6. Claimant was oriented to time, place and person. He can recall six digits forward and five digits backward. He can recall three out of three objects after a three minute time lapse. He knew his birthdate and could correctly name many recent past presidents. He exhibited average capabilities for general fund of knowledge. He could correctly name many large cities, many currently famous people and three current events. He completed serial sevens with no mistakes. Claimant indicated that a Bush and a tree were alike in that

they are both plants and they were different sizes, page 8. Claimant's axis V GAF was 50. His prognosis was poor, page 9.

At Step 2, Claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that had lasted or was expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that Claimant suffered a severely restrictive physical or mental impairment. Claimant had reports of pain in multiple areas of his body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the Claimant. There are insufficient laboratory or x-ray findings listed in the file to establish disability. The clinical impression was that Claimant was [REDACTED]. There is no medical finding that Claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, Claimant restricted himself from tasks associated with occupational functioning based upon his reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that Claimant has met the evidentiary burden of proof can be made.

This Administrative Law Judge finds that the medical record is insufficient to establish that Claimant had a severely restrictive physical impairment. Even [REDACTED] alleges that the [REDACTED] indicates that the [REDACTED] of [REDACTED] has not yet been determined. Therefore, this Administrative Law Judge cannot assess accurately whether or not Claimant's medical condition contributed to his death. The death certificate, which is not a part of the record, does not indicate that Claimant's death was caused by an ongoing medical condition. In fact, the hearing request filed by [REDACTED] indicates that the cause of death was pending. Therefore, Claimant's application was appropriately denied and is denied at step 2 based upon insufficient evidence. Claimant would be considered medically disabled for the month of [REDACTED], the month in which he died.

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, App. 1, 12.00(C).

There is insufficient objective medical/psychiatric evidence in the record indicating Claimant suffered severe mental limitations. There is **no** mental residual functional capacity assessment in the record. The evidentiary record is insufficient to find that Claimant suffered a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that Claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

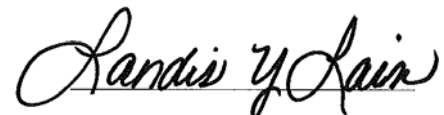
If Claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of Claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations. Because of the Claimant's death, the sequential evaluation process cannot continue as he can no longer perform his prior work and he has no residual functional capacity based upon the fact that he is [REDACTED]

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that Claimant was not eligible to receive Medical Assistance and/or retroactive Medical Assistance for the months prior to [REDACTED] based upon disability. The Department's decision must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has appropriately established on the record that it was acting in compliance with Department policy when it denied Claimant's application for Medical Assistance based upon disability. The Department has established its case by a preponderance of the evidence. Disability is established in the [REDACTED]. Therefore, Claimant is disabled for purposes of disability benefit eligibility in the month of [REDACTED]

Accordingly, the Department's decision is partially AFFIRMED and the request for hearing is [REDACTED]



Landis Y. Lain
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: 10/31/14

Date Mailed: 10/31/14

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 Claimant;
- 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.

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

LYL/tb

cc:

