

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

IN THE MATTER OF:



Reg. No.: 20145113
Issue No(s): 2009
Case No.: [REDACTED]
Hearing Date: February 19, 2014
County: Kent County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 19, 2014, from Lansing, Michigan. Participants on behalf of Claimant included himself. Participants on behalf of the Department of Human Services (Department) included ES [REDACTED] and AP Supervisor [REDACTED].

ISSUES

Did the Department of Human Services properly determine that Claimant is not disabled and deny Claimant's August 14, 2013 application for Medical Assistance (MA) based on disability, retroactive Medical Assistance (MA) based on disability?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant was born on November 24, 1966 and was 46 years old on the date of application. In accordance with the Medical-Social Questionnaire (DHS-49-F) submitted by Claimant he is 5' 9" tall and weighs approximately 210 pounds. Claimant's formal education consists of 12 years of school.
2. In accordance with the Medical-Social Questionnaire (DHS-49-F) submitted by Claimant he has past relevant work as a mold maker and in construction. Claimant reports he last worked in 2012.
3. In accordance with the Medical-Social Questionnaire (DHS-49-F) submitted by Claimant, he asserts disability based on arthritis and cancer.

4. On August 14, 2013, Claimant applied for Medical Assistance (MA) based on disability, retroactive Medical Assistance (MA) based on disability and State Disability Assistance (SDA).
5. On September 25, 2013, the Department of Human Services Medical Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) based on disability but did approve Claimant for State Disability Assistance (SDA).
6. On September 27, 2013, Claimant was sent notice of the Department's determination.
7. On October 8, 2013, Claimant submitted a request for hearing.
8. On December 9, 2013, the State Hearing Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) based on disability.
9. On February 19, 2014, at this hearing, Claimant waived time limits and presented additional medical evidence.
10. On June 2, 2014, the State Hearing Review Team again determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) based on disability.

CONCLUSIONS OF LAW

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Disability determinations done by the State of Michigan for Medical Assistance (MA) based on disability use the Social Security Administration standards found in United States Code of Federal Regulations (CFR) at Title 20, Part 416. The law defines disability 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 at least 12 months. To meet this definition, you must have severe impairments that make you unable to do your past relevant work or any other substantial gainful work that exists in the national economy.

In accordance with the Federal Regulations an initial disability determination is a sequential evaluation process. The evaluation consists of five steps that are followed in a set order.

STEP 1

At this step a determination is made on whether Claimant is engaging in substantial gainful activity (20 CFR 416.920(b)). If you are performing activities for pay or profit, we will use 20 CFR 416.971 through 416.975 to evaluate the activities to determine if they are substantial gainful activity. Substantial gainful activity is defined as work activity: that is both substantial and gainful; and involves doing significant physical or mental activities. Gainful work activity is work activity that you do for pay or profit (20 CFR 416.972). If you are engaged in substantial gainful activity, you are not disabled regardless of how severe your physical or mental impairments are and regardless of your age, education, and work experience.

Based on the evidence in the record and Claimant's testimony, Claimant has not received earnings as an employee since the date of application. Therefore, Claimant is not engaged in substantial gainful activity. Claimant is not found ineligible and the analysis proceeds to step two.

STEP 2

At the second step it is determined whether you have a severe physical or mental impairment that meets the duration requirement or a combination of impairments that is severe and meets the duration requirement (20CFR 416.920). An impairment or combination of impairments is severe within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include:

Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;

Capacities for seeing, hearing, and speaking;

Understanding, carrying out, and remembering simple instructions;

Use of judgment;

Responding appropriately to supervision, co-workers and usual work situations;
and

Dealing with changes in a routine work setting.

An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities (20 CFR 416.921).

In addition to the limiting effect of the impairments they must also meet durational requirements, 90 days for State Disability Assistance (SDA) and 12 months for Medical Assistance (MA) based on disability. If we determine that your impairments are not severe, you are not disabled.

In accordance with the Medical-Social Questionnaire (DHS-49-F) submitted by Claimant he asserts disability based on arthritis and cancer. Claimant asserts shoulder and hip pain from arthritis. Claimant was diagnosed with colon cancer in 2013 and subsequently treated. What follows is a synopsis of all relevant evidence in the record from medical sources presented in chronological order.

There is a radiology report on an April 24, 2013 X-ray of Claimant's right shoulder. (Page 26) The report indicates less than expected movement between the internal and external rotation of the humeral head and mild arthropath of the joint.

There is a February 24, 2014 report of CT scan with contrast. The medical imaging was done as follow up to Claimant's treatment for sigmoid colon cancer during 2013. The CT of Claimant's chest, abdomen, and pelvis showed no signs of metastatic disease, residual or recurrent malignancy.

20 CFR 416.927

How we weigh medical opinions. Regardless of its source, we will evaluate every medical opinion we receive. Unless we give a treating source's opinion controlling weight under paragraph (d)(2) of this section, we consider all of the following factors in deciding the weight we give to any medical opinion.

Examining relationship. Generally, we give more weight to the opinion of a source who has examined you than to the opinion of a source who has not examined you.

Treatment relationship. Generally, we give more weight to opinions from your treating sources, since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of your medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations.

Supportability. The more a medical source presents relevant evidence to support an opinion, particularly medical signs and laboratory findings, the more weight we will give that opinion. The better an explanation a source provides for an opinion, the more weight we will give that opinion. Furthermore, because nonexamining sources have no examining or treating relationship with you, the weight we will give their opinions will depend on the degree to which they provide supporting explanations for their opinions.

Consistency. Generally, the more consistent an opinion is with the record as a whole, the more weight we will give to that opinion.

Specialization. We generally give more weight to the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist.

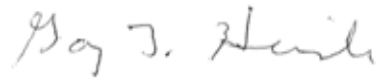
There is no medical evidence providing a specific diagnosis of arthritis nor any identified physical limitations attributable to arthritis. The final report regarding Claimant's cancer treatment shows no ongoing medical impairment from the cancer.

The objective medical evidence of record is not sufficient to establish that claimant has severe impairments that have lasted 12 months or more and prevent employment at any job for 12 months or more. Therefore, claimant is disqualified from receiving Medical Assistance (MA) based on disability at this step.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly determined that Claimant is not disabled and denied Claimant's August 14, 2013 application for Medical Assistance (MA) based on disability, retroactive Medical Assistance (MA) based on disability.

The Department's action is **UPHELD**.



Gary F. Heisler
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 11, 2014

Date Mailed: June 11, 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;

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- 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.

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

GFH/hj

cc:

