

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 14-018081
Issue No.: 2009, 4009
Case No.: ██████████
Hearing Date: January 28, 2015
County: GLADWIN

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, telephone hearing was held on January 28, 2015, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. ██████████ ██████████, the Claimant's mother, also appeared as a witness. Participants on behalf of the Department of Human Services (Department) included ██████████, Eligibility Specialist.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) and/or State Disability Assistance (SDA) benefit programs?

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 September 4, 2014, Claimant applied for Medical Assistance (MA-P) and State Disability Assistance (SDA).
2. On November 24, 2014, the Medical Review Team denied Claimant's request.
3. The Department issued a Notice of Case Action dated November 24, 2014 denying the Claimant's MA-P and SDA application.
4. On December 5, 2014 the Claimant submitted to the Department a timely hearing request.

5. An Interim Order was issued on January 30, 2015 requesting additional medical evidence be provided by Claimant.
6. Claimant at the time of the hearing was ■ years of age with a ■ birth date. The Claimant was 5'10" tall and weighed 190 pounds.
7. Claimant completed high school. The Claimant also obtained a certificate for massage therapy.
8. Claimant's prior employment included working at a call center in tech support, as a massage therapist, in a pill factory doing quality control and as an asbestos removal worker.
9. Claimant alleges physical impairments due to epilepsy with grand mal seizures frequently with memory loss and extreme fatigue after the seizure activity ends. The Claimant also received a nerve implant wire around the vagus nerve and is restricted from lifting more than 10 pounds.
10. The Claimant has alleged a mental disabling impairment due to depression.
11. Claimant's limitations have lasted and are expected to last for 12 months or more.

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.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

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).

Here, Claimant has satisfied requirements as set forth in steps one, two and three of the sequential evaluation. The Claimant is not currently engaging in substantial gainful activity and is not employed; thus, is not disqualified at Step 1. The Claimant's medical evidence referenced below also satisfies the requirement of severity of his impairment thus satisfying Step 2 of the required analysis.

Claimant alleges physical impairments due to epilepsy frequent (weekly or every weekend half) with grand mal seizures, with memory loss and extreme fatigue after the seizure activity ends. The Claimant also received a nerve implant wire around the vagus nerve and is restricted from lifting more than 10 pounds.

The Claimant has alleged a mental disabling impairment due to depression.

A summary of the Medical Evidence follows.

The Claimant was seen by his neurologist on [REDACTED] and the following history was noted. Onset of seizures at age [REDACTED] then averaging once yearly but has become more frequent. Multiple assaults to the head from physical abuse from stepfather as a child. Has been drug free for 5 years with previous abuse of cocaine, meth, heroin and ecstasy. Reported seizures occur twice weekly. At times will have grand mal activity with experience of aura followed by focal stare with no response. The Claimant was placed on new medication and to obtain and bring most recent imaging of brain and EEG for review.

The Claimant's treating neurologist saw the Claimant on [REDACTED] for an initial assessment. At that time the doctor's notes indicate reports of seizures occurring for 5 minutes but are variable. Seizures are generalized tonic, clonic movements with loss of awareness. Currently seizures were experienced every 2 weeks. Seizures are preceded by aura and loss of awareness. Seizures are usually followed by confusion, drowsiness and lethargy. These symptoms have been associated with a history of epilepsy. The records note 5 GTC seizures since last visit. EEG showed bi-temporal spikes/generalized spikes as per report. MRI showed encephalomalacia right temporal area. Has history of multiple head injuries. A general review of systems was conducted. Under neurological notes indicates dizziness, loss of consciousness, seizures, tremor and vertigo. Under psychiatric notes indicates depression, insomnia, memory loss and personality changes. Neurologic notes the exam was normal. The diagnosis was seizure disorder, noting medically refractory partial epilepsy (complex partial seizures with secondary generalization). At the time a referral to either [REDACTED] for consideration of epilepsy surgery. All scans, previous record, EEG review discussed with patient.

On [REDACTED] the Claimant was taken by EMS to the hospital due to a witnessed seizure in a public library. Patient fell against bookshelf and had scalp laceration. Abnormal vital signs were noted. A CT of the head was done noted normal. The notes indicate patient has had three previous visits for seizure. Diagnostic impression was grand mal seizure, seizure disorder and scalp laceration and repair and was discharged in stable condition.

The Claimant was seen again in the ER on [REDACTED] with abnormal vital signs and headache, right facial twitches, confusion, nausea with pain of 7/10. The differential diagnosis includes but not limited to concussion, closed head injury/TBI, with no intracranial hemorrhage, metabolic disorder with no evidence of acute intracranial process. The evaluation noted symptoms most likely secondary to concussive syndrome. The Claimant was discharged to home stable with nausea medication. Marijuana use was noted.

On [REDACTED] the Claimant was seen for seizure follow-up. Report notes many different medications tried including: Kepra, Depakote, Dilantin, Tegretol and Lamictol. The doctor prescribed new medication and increased Trileptol. An EEG was ordered.

On [REDACTED] the Claimant was seen and evaluated for seizures by the [REDACTED]. An examination was conducted with an assessment of seizure disorder and EEG showed epileptic discharges. The Claimant was restricted from driving for six months due to noted grand mal seizures and placed on new medication.

On [REDACTED] an EEG was performed with the impression of abnormal EEG because of frequent spiking wave activities and generalized burst spiking wave activities strongly suggest an epileptic tendency.

On [REDACTED] the Claimant was seen for seizure follow-up with reports of one to two seizures weekly. EEG showed epileptic discharges. Restricted no driving for six months.

The Claimant was seen in the ER on [REDACTED] after falling off his skateboard onto curb of street with a seizure. The Claimant arrived by EMS and notes indicate EMS employees also observed seizure activity for 45 seconds to a minute. Claimant was found unresponsive. At ER the Claimant was evaluated as disoriented. The Claimant received repair of a laceration above right eyebrow. The diagnosis was seizure, face laceration, head injury. The Claimant was released in stable condition.

On [REDACTED] the Claimant was seen in the ER for possible seizure. The Claimant arrived brought by paramedics who, although confused, the Claimant said he felt fine and there was no doubt of seizure activity. Claimant did not want further workup or treatment.

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.

At the hearing the Claimant credibly testified that he continues to have recurrent seizures, experiences memory loss, loses consciousness and is medication compliant. The Claimant had just had a seizure the Thursday prior to the hearing and also experiences memory loss and explained that his seizure activity is getting worse. The Claimant's doctor has also revoked his driving privileges until Claimant is seizure free for six months. The Claimant's mother also witnessed the last seizure which lasted ten minutes. The Claimant lives with his parents and his mother credibly testified that he experiences seizures at least every week to a week and a half.

In this matter Listing 11.02 Epilepsy – convulsive epilepsy, (grand mal or psychomotor) The listing requires:

11.02 Epilepsy - convulsive epilepsy, (grand mal or psychomotor), documented by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once a month, in spite of at least 3 months of prescribed treatment. With:

- A. Daytime episodes (loss of consciousness and convulsive seizures) or
- B. Nocturnal episodes manifesting residuals which interfere significantly with activity during the day.

Based upon a review of the treating neurologist's evaluation notes which include a diagnosis of epilepsy and the recurrent hospitalizations due to seizures, several of which were witnessed, while medication complaint, it is determined that the Claimant has satisfied the requirements or its medical equivalent of listing 11.02 for Epilepsy and therefore is found disabled at Step Three of the analysis with no further analysis required.

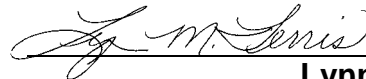
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled for purposes of the MA and/or SDA benefit program.

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. The Department is ORDERED to initiate a review of the application dated September 4, 2014 for Medical Assistance and State Disability Assistance if not done previously, to determine Claimant's non-medical eligibility.
2. The Department shall issue a supplement if the Claimant is found eligible after non-medical eligibility is determined, for SDA benefits Claimant is entitled to receive in accordance with Department policy.
3. A review of this case shall be set for April 2016.



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **4/8/2015**

Date Mailed: **4/8/2015**

LMF / cl

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, 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 48909-8139

CC:

[REDACTED]