

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 200922021
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 11, 2009
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on August 11, 2009.

ISSUE

Was the denial of claimant's application for MA-P and SDA for lack of disability correct?

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 applied for MA-P and SDA on September 15, 2008.
- (2) Claimant is 52 years old.
- (3) Claimant has a high school education.

- (4) Claimant has a prior work history consisting of operating a machine in a factory, and driving a truck.
- (5) Claimant performed the factory worker job at a medium exertional level.
- (6) Claimant performed the truck driver job at the sedentary exertional level.
- (7) In [REDACTED], claimant injured his back at work.
- (8) In [REDACTED], claimant underwent a lumbar laminectomy to relieve back pain.
- (9) In [REDACTED], claimant slipped and fell on an icy porch and, some weeks later, heard a pop in his back when he bent over.
- (10) Claimant went back to work after the laminectomy.
- (11) Claimant has no submitted medical records after [REDACTED].
- (12) The medical records of [REDACTED] shows an admittance to a hospital emergency room for an exacerbation of chronic back pain, but contains no indication that the back pain would impair his ability to perform basic work activities.
- (13) Claimant is able to do many activities of daily living, including driving, grocery shopping, and some housekeeping, without assistance.
- (14) On December 9, 2008, the Medical Review Team denied MA-P and SDA, stating that claimant was capable of performing past work under the Medical/Vocational grid rules found at 20 CFR 416.967(b).
- (15) On March 20, 2009, claimant filed for hearing.
- (16) On May 26, 2009, the State Hearing Review Team denied MA-P, Retro MA-P (though claimant did not apply) and SDA, stating that claimant was capable of performing other work.

- (17) On August 11, 2009, a hearing was held before the Administrative Law Judge.
- (18) Claimant did not appear at the hearing.
- (19) Claimant's representative did not appear at the hearing; by permission, a law clerk employed by the claimant's representative appeared.
- (20) No new medical records were submitted.
- (21) Claimant's representative submitted a brief, which referred to medical records that were not in the file.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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).

Federal regulations require that the Department use the same operative definition of the term "disabled" as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

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

This is determined by a five step sequential evaluation process where current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five step sequential evaluation, and when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920

The first step that must be considered is whether the claimant is still partaking in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily blind individuals for 2009 is \$1,640. For non-blind individuals, the monthly SGA amount for 2009 is \$980.

In the current case, claimant did not appear at the hearing to testify that he is not working, and although the Department has presented no evidence or allegations that claimant is engaging in SGA, the burden of proof falls solely on the claimant. Therefore, because there is no evidence to the contrary, the Administrative Law Judge cannot determine whether the claimant is

engaging in SGA, and thus should fail the first step of the sequential evaluation process and cannot be found disabled.

However, for the sake of argument, and in deference to claimant's application which claims that he was not working, the Administrative Law Judge will still continue on to the second step in the evaluation process.

The second step that must be considered is whether or not the claimant has a severe impairment. A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means 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).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. This is a *de minimus* standard in the disability determination that the

court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, claimant has presented very limited medical evidence of chronic back pain resulting from a lumbar laminectomy. Claimant also alleged various other physical ailments, all of which are completely unsubstantiated by claimant's medical records. Because there is no objective basis for these impairments, they will not be considered in the evaluation process.

In letters from the treating source dated [REDACTED] and [REDACTED], just months after claimant's surgery, the treating source noted that there were no symptoms of radicular pain. Furthermore, in the letter dated [REDACTED], the treating source noted that claimant's motor functions were intact. Each letter from the treating source following the lumbar laminectomy procedure showed continued progress on behalf of the claimant. Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers; Bowen v Commissioner*, 473 F. 3d 742 (6th Cir. 2007). The undersigned sees no reason to discount claimant's treating source opinions.

In addition to the medical evidence, claimant certified in his DHS Form 49-F that he last worked in July 2007, approximately six months after his surgery. While this fact alone would not be enough to bar claimant's receiving of benefits, the fact that the progress reports written by the treating source in the time between the surgery in [REDACTED] and his last date of working in [REDACTED] showed continuous progress, leads the undersigned to believe that the condition was not a severe impairment that significantly limited claimant's physical or mental ability to perform basic work activities for a period of 12 months or more. As a result, the Administrative Law Judge finds that this is not a significant impairment to claimant's performance of basic

physical work activities, and is therefore not enough to pass step two of the sequential evaluation process.

In the present case, the claimant has not presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c).

Claimant's most recent medical records are from [REDACTED], which detail a trip to the emergency room for back pain. No expected prognosis or documentation of the exact severity of this impairment is contained in this record. While claimant had been treated by the emergency room 3 times in as many months, each one of those maladies were seemingly unrelated, and showed no signs that they were an impairment that would meet the durational requirements of step 2, much less be an impairment that would substantially affect basic work activities.

In fact the medical record as a whole does not establish any impairment that would impact claimant's basic work activities, much less a medical impairment has lasted the required durational limit. There are no current medical records in the case that establish that claimant continues to have a medical impairment. Claimant did not appear to testify, and thus it is unknown whether claimant still wants or needs disability based Medicaid. Although the claimant has complained of medical problems in his application, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant's claim that the impairment or impairments are severe enough to reach the criteria and definition of disabled. Accordingly,

after careful review of claimant's medical records, this Administrative Law Judge finds that claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

With regard to the SDA program, a person is considered disabled for the purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Other specific financial and non-financial eligibility criteria are found in PEM 261. As claimant does not meet the federal standards for SSI disability for at least 90 days, as addressed above, the undersigned concludes that the claimant is not disabled for the purposes of the SDA program as well.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is not disabled for the purposes of the MA and SDA program. Therefore, the decisions to deny claimant's application for MA-P and SDA were correct.

Accordingly, the Department's decision in the above stated matter is, hereby,
AFFIRMED.



Robert Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 07/02/10

Date Mailed: 07/08/10

NOTICE: Administrative Hearings 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. Administrative Hearings 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.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

RJC/dj

cc:

