

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: 2009-15531

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 3, 2009

Huron County DHS

ADMINISTRATIVE LAW JUDGE: Robert 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 June 3, 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, retro MA-P and SDA on 12-29-08.
- (2) Claimant is 22 years old.
- (3) Claimant has a high school education.

(4) Claimant is currently working as a stock clerk, making roughly \$7.00 per hour and working up to 12 hours per day.

(5) Claimant's last paycheck was \$481.68 in net pay.

(6) Claimant works 40 hours per week.

(7) Claimant has been diagnosed with Von Gierke's disease, a genetic disorder that severely affects glycogen storage. As a side effect, claimant also has early onset osteoporosis, some history of learning disorder and borderline intellectual functioning.

(8) Claimant has had several flare-ups of this disease, including one in November, 2008, in which his body completely shut down.

(9) On 1-16-09, the Medical Review Team denied MA-P, retro MA-P, and SDA, stating that claimant was capable of performing other work under the Medical/Vocational grid rules found at 20 CFR 416.920(f), and specifically, Rule 202.17.

(10) On 2-13-09, claimant filed for hearing.

(11) On 3-19-09, the State Hearing Review Team denied MA-P, retro MA-P and SDA, stating that claimant was capable of performing other work.

(12) SHRT concluded that claimant was capable of light work, denying claimant's MA-P under vocational Rule 202.20.

(13) On 6-3-09, a hearing was held before the Administrative Law Judge. No new evidence was submitted and claimant was unrepresented.

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 testified that he is working. Upon further examination, claimant testified that he is working 40-hour weeks at \$7.00 an hour. On some days, he works up to 12 hours a day. Claimant testified that his last paycheck was for \$481.68, and he receives this check once every 2 weeks; the amount varies from paycheck to paycheck, depending on the number of hours he works.

By the Administrative Law Judge's calculations, 40 hours a week at \$7.00 an hour is \$560 for two weeks, or almost \$1,120 a month. This is more than the threshold for SGA. While claimant's last paycheck was \$481.68, this was the net amount, after taxes. The SGA threshold only allows for deductions for impairment related work expenses. Claimant's gross paycheck is in line with claimant's testimony of his hours per week and pay rate.

Therefore, as claimant is performing SGA, a finding of not disabled is directed.

The Administrative Law Judge would note that this finding does not belittle the seriousness of claimant's disability; by all accounts, claimant has been born with a very serious genetic disorder that will only grow worse as claimant ages, and it is unlikely that claimant will be able to continue performing SGA at this level for an indefinite period of time; when and if that time comes, claimant would be well advised to pursue his disability case again. Furthermore,

claimant testified that claimant's SGA comes from working for a family friend; he was unable to find employment with his disability in the general workforce.

However, the rules for disability make no distinction as to how the claimant got the job, the nature of the job or the like; the rules only examine whether the claimant is exceeding the SGA threshold. This is a bright line rule; even if claimant were a penny above this limit, a finding of not disable would be directed.

For that reason, the Administrative Law Judge must conclude that the Department was not in error when it found claimant not disabled.

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.

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

Date Signed: June 30, 2009

Date Mailed: June 30, 2009

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/cv

cc:

