

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: 200926699
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 25, 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 25, 2009.

ISSUE

Was the denial of claimant's application for MA-P, Retro 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 January 23, 2009
- (2) Claimant is 28 years old.
- (3) Claimant has a high school education.
- (4) Claimant is not currently working.

- (5) Claimant has a prior work history consisting of a factory inspector, grocery stocker, fast food preparer, and law office messenger.
- (6) Claimant performed these jobs at a light and medium exertional level.
- (7) Claimant suffers from sickle cell disease, as a result of which he occasionally suffers with vaso occlusive crises, which are painful episodes in the life of a person affected with sickle cell anemia.
- (8) Claimant states that the pain is primarily in his back as well as his right arm, but that it has traveled around to other parts of his body during previous episodes.
- (9) The severe chronic pain of which claimant complains is documented by several treating sources and manifests at anywhere from 6-10 on the pain scale.
- (10) Claimant has been proscribed several narcotics to deal with this pain.
- (11) Patient's episodes are often accompanied by nausea and vomiting and significant shortness of breath.
- (12) Claimant's functional capacity is extremely limited and only retains the capacity to lift less than 10 lbs occasionally, is not to lift any weight heavier than 10 lbs, should not stand or walk more than 2 hours in an 8 hour day, and retains little capacity for pushing, pulling, lifting, reaching or carrying with his right arm.
- (13) Claimant has marked difficulties in completing activities of daily living, requiring assistance to perform many basic functions.
- (14) On March 24, 2009, the Medical Review Team denied MA-P, Retro MA-P and SDA, stating that claimant's impairment did not meet the duration requirement, as per 20 CFR 416.909.
- (15) On May 1, 2009, claimant filed for hearing.

- (16) On July 1, 2009, the State Hearing Review Team denied MA-P, Retro MA-P and SDA, stating that claimant's impairment did not meet the duration requirement, as per 20 CFR 416.909.
- (17) On August 25, 2009, a hearing was held before the Administrative Law Judge.

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 has testified that he is not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. Therefore, the Administrative Law Judge finds that the claimant is not engaging in SGA, and thus passes the first step of the sequential 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 more than sufficient evidence of a hematological disorder that has more than a minimal effect on the claimant’s ability to do basic work activities, particularly when the claimant is experiencing vaso occlusive crises. Claimant’s treating source and hospital records state that claimant has restrictions in his functional capacities to do physical activities, including lifting, walking, and standing.

In regards to the duration of claimant’s impairment, there is an understandable degree of confusion. Although claimant has suffered from sickle cell disease since his birth, his ability to do basic work activities is typically only hindered during the above-mentioned vaso occlusive crises. However, likely due to the unpredictable frequency and severity of these crises, courts in the past have not found duration to be an issue in cases involving sickle cell disease. *Shinn v.*

Comm'r of Soc. Sec., 391 F.3d 1276, 1281 (11th Cir. 2004). Claimant thus passes step two of our evaluation.

In the third step of the sequential evaluation, we must determine if the claimant's impairments are listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.925. This is, generally speaking, an objective standard; either claimant's impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of "not disabled"; if the claimant's impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that the claimant's medical records contain medical evidence of an impairment that meets or equals a listed impairment. The great weight of the evidence of record finds that claimant's impairment meets or equals the listings for hematological disorders contained in section 7.00 (hematological disorders).

Appendix 1 of Subpart P of 20 CFR 404, Section 7.00 has this to say about sickle cell disease:

7.00 C. Sickle cell disease refers to a chronic hemolytic anemia associated with sickle cell hemoglobin, either homozygous or in combination with thalassemia or with another abnormal hemoglobin (such as C or F).

Appropriate hematologic evidence for sickle cell disease, such as hemoglobin electrophoresis, must be included. Vaso-occlusive or aplastic episodes should be documented by description of severity, frequency, and duration.

Major visceral episodes include meningitis, osteomyelitis, pulmonary infections or infarctions, cerebrovascular accidents, congestive heart failure, genito-urinary involvement, etc.

7.05 Sickle cell disease or one of its variants. With:

- A. Documented painful (thrombotic) crises occurring at least three times during the 5 months prior to adjudication; or

- B. Requiring extended hospitalization (beyond emergency care) at least three times during the 12 months prior to adjudication; or
- C. Chronic, severe anemia with persistence of hematocrit of 26 percent or less; or
- D. Evaluate the resulting impairment under the criteria for the affected body system.

In order to meet or equal the listings for sickle cell disease or one of its variants, a claimant must meet or equal the criteria set forth in 7.05. After viewing the evidence of record, including treating source opinions, the undersigned believes that the evidence shows claimant has met the criteria for A. The issue at hand was adjudicated on March 24, 2009 when the state Medical Review Team denied claimant's claim for disability. In the 5 months leading up to the date of adjudication, claimant documented painful crises no less than three times. More specifically, claimant visited the Spectrum Health Blodgett Emergency Department on: December 5, 2008; January 13, 2009; and, January 14, 2009. On all three occasions, claimant's chief complaint was pain associated with sickle cell disease and each time, the assessment by the treating source concurred that claimant's pain was due to sickle cell pain crises.

As claimant meets the criteria of 7.05, the Administrative Law Judge holds that claimant meets or equals the listings contained in section 7.00, and therefore, passes step 3 of our 5 step process. By meeting or equaling the listing in question, claimant must be considered disabled. 20 CFR 416.925.

With regard to steps 4 and 5, 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. Therefore, the Administrative Law Judge sees no reason to continue his analysis, as a determination can be made at step 3.


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 meets the federal standards for SSI disability, as addressed above, the undersigned concludes that the claimant is 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 disabled for the purposes of the MA and SDA program. Therefore, the decisions to deny claimant's application for MA-P, Retro MA-P and SDA were incorrect.

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

The Department is ORDERED to process claimant's MA-P, Retro MA-P and SDA application and award required benefits, provided claimant meets all non-medical standards as well. The Department is further ORDERED to initiate a review of claimant's disability case in July, 2011.



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

Date Signed: 07/15/10

Date Mailed: 07/20/10

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:

