STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

Reg. No: 201039685
Issue No: 2009
Case No:
Load No:
Hearing Date:
July 26, 2010
Wayne 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 July 26, 2010.

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 February 17, 2010.

(2) Claimant is 50 years old.

(3) Claimant has a high school education.

(4) Claimant has a work history of grounds keeping, welding, and stamping cards.

(5) These jobs were performed at the heavy exertional level.

(6) In October 2008, claimant suffered an unspecified back injury.

(7) In , a MRI was performed on the lumbrosacral spine.

(8) This MRI showed evidence of some degenerative disc changes in the lower lumbar region, with some disc herniation at the L4-L5 levels.

(9) There is no further evidence of chronic back issues.

(10) There is no evidence these back issues lasted, or were expected to last, at the time of application, 12 months.

(11) No prognosis was given at the time of the MRI.

(12) The MRI diagnosis contains no indication that the back pain would impair his ability to perform basic work activities.

(13) Claimant was diagnosed in , with pancreatitis.

(14) There is no evidence that this impairment prevented claimant from performing basic work activities.

(15) There is no evidence that claimant has any trouble with regard to performing his activities of daily living.

(16) On March 16, 2010, the Medical Review Team denied 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).

(17) On June 15, 2010, claimant filed for hearing.

(18) On June 10, 2010, the State Hearing Review Team denied MA-P, Retro MA-P and SDA, stating that claimant was capable of performing other work.

(19) On July 26, 2010, a hearing was held before the Administrative Law Judge.

(20) Claimant did not appear at the hearing.

(21) Claimant's representative did appear at the hearing; claimant was represented by [redacted].

(22) No new medical records were submitted.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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 2010 is $1,640. For non-blind individuals, the monthly SGA amount for 2010 is $1000.

In the current case, claimant did not appear at the hearing to testify that he is not working. Though the Department has presented some scant evidence that claimant is

not engaging in SGA that can be detected through the Work Number, the undersigned feels that this evidence is not significant enough to show that the claimant is not engaging in any SGA; the undersigned also feels that this burden of proof should fall solely on the claimant.

However, for the sake of argument, and in deference to claimant's application 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 degenerative disc changes, stemming from an MRI conducted in . There are no other specific records documenting these problems, besides a few pages of notes that make passing reference to chronic back pain. No work-related limitations from this back pain are ever discussed. Claimant also alleged a bout of pancreatitis in . No work related limitations are ever assigned to the pancreatitis.

In a DHS-49 dated January 11, 2010, a doctor with, at most, a passing familiarity with the case, opined that claimant was restricted to occasionally lifting 10 pounds, only standing or walking two hours or less in an eight hour day, and could not reach or grasp. 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). Unfortunately, in the current case, there is no evidence that this medical opinion is from a treating source, and, thus must be discounted as inconsistent with the medical evidence.

A treating source is defined as a claimant's own physician, psychologist, or other acceptable medical source who has provided the claimant with medical treatment or evaluation and has or has had an ongoing treatment relationship with the claimant. Generally, it is considered that a claimant has an ongoing treatment relationship with an

acceptable medical source when the medical evidence establishes that the claimant sees, or has seen, the source with a frequency consistent with accepted medical practice for the type of treatment and/or evaluation required for the medical condition(s). 20 CFR 404.1502

There is no evidence that the claimant has an ongoing treatment relationship with the source in question. In [redacted], this source appears to have ordered an MRI for the claimant that diagnosed the degenerative changes. There is no evidence that claimant saw this source again until a year later, when he had the source fill out the DHS-49 in question. Claimant did not testify that he had seen this source with any frequency necessary to establish a frequency consistent with accepted medical practice. Therefore, the undersigned cannot state that this statement was filled out by a treating source, and gives it no special deference.

Furthermore, the statement is inconsistent with the available medical evidence. The only real piece of evidence that points to claimant's back pain is the MRI, referenced above, that was performed in [redacted]. While claimant had subsequent medical records, these records only refer to claimant's condition in passing, and make no real note that the condition is serious, or impairs claimant's work related functions in any way. This DHS-49 form stands alone in opining that claimant suffers from a serious back condition; the undersigned would expect that if the condition was as serious as stated in the form, the condition would be referenced somewhere in the medical records beyond passing notes that claimant has chronic back pain. At the very least, the specific limitations provided by the source in question are not supported

elsewhere in the record. Therefore, as the limitations are not supported in the record, the undersigned discounts this statement as inconsistent with the record as a whole.

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], where claimant was hospitalized briefly for pancreatitis. 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, there is no prognosis listed, and the ailment showed no signs that it was an impairment that would meet the durational requirements of step 2, much less be an impairment that would substantially affect basic work activities.

Claimant's back condition must be treated in a similar fashion. While claimant was given an MRI in [redacted], no other evidence of this ailment exists. There is no evidence that claimant is impeded in any way (except for the statement of January 2010, which must be disregarded, as stated above), by this condition. The only actual medical records in the file only refer to the condition in passing, and do not show that claimant has, or should have, any functional limitations as a result. At the very least, it does not appear that claimant has sought treatment for a condition, which one would expect, if it was as disabling as claimed.

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

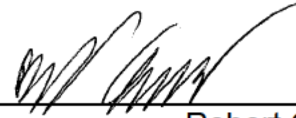
lasted the required durational limit. There are no current medical records in the case that even establish that claimant continues to have a medical impairment. Claimant did not appear to testify, and thus it is unknown whether claimant still wants or needs disability based Medicaid. Although the claimant 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 there is not enough evidence to show that claimant is 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 BEM 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 Maura Corrigan, Director
Department of Human Services

Date Signed: 02/15/11

Date Mailed: 02/16/11

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: