

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

IN THE MATTER OF:



Reg. No.: 2010-30633  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: August 23, 2010  
DHS County: Wayne (35)

**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 23, 2010 by teleconference in Detroit, Michigan.

**ISSUE**

Was the denial of claimant's application for MA-P, retroactive 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 on October 3, 2009.
- (2) Claimant is [REDACTED] years old.
- (3) Claimant has an 8<sup>th</sup> grade education.
- (4) Claimant is not currently working.
- (5) Claimant has a history of HIV infection.
- (6) Claimant's medical records show significantly low T-cell counts and elevated viral load counts.

- (7) Claimant reports symptoms of weight loss, though not enough to constitute wasting, diarrhea lasting more than 1 month, night sweats, and generalized weakness.
- (8) Claimant's HIV symptoms markedly impair claimant in performing activities of daily living.
- (9) On February 2, 2010, the Medical Review Team denied MA-P, stating that claimant was capable of performing other work.
- (10) On February 26, 2010, claimant filed for hearing.
- (11) On April 20, 2010, the State Hearing Review Team denied MA-P, and retroactive MA-P, stating that claimant was capable of other work.
- (12) On August 23, 2010, a hearing was held before the Administrative Law Judge.

### **CONCLUSIONS OF LAW**

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) and the Bridges Eligibility Manual (BEM).

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 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 participating 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 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. 20 CFR 416.920(c). 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 F.2d 860, 862 (6<sup>th</sup> 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 sufficient evidence of HIV infection that has more than a minimal effect on the claimant's ability to do basic work activities. Claimant has elevated viral loads. Claimant is unable to afford medication to keep the disease in check. Claimant has generalized weakness symptoms that leave claimant unable to function. Claimant has lost weight, and has had chronic diarrhea for over a month. Claimant is unable to sleep due to malaise, and has had an elevated temperature.

These limitations are both severe and create significant impairments in claimant's functioning, meet the durational requirements, and impair claimant's ability to perform work-related activities. Thus, claimant easily passes Step 2 of our evaluation.

In the third step of the sequential evaluation, we must determine if the claimant's impairment is 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.

Appendix 1 of Subpart P of 20 CFR 404, Section 14.00 has this to say about HIV infection:

**14.08 Human immunodeficiency virus (HIV) infection.**

With documentation as described in 14.00F and one of the following:

**K.** Repeated (as defined in 14.00I3) manifestations of HIV infection, including those listed in 14.08A-J, but without the requisite findings for those listings (for example, carcinoma of the cervix not meeting the criteria in 14.08E, diarrhea not meeting the criteria in 14.08I), or other manifestations (for example, oral hairy leukoplakia, myositis, pancreatitis, hepatitis, peripheral neuropathy, glucose intolerance, muscle weakness, cognitive or other mental limitation) resulting in significant, documented symptoms or signs (for example, severe fatigue, fever, malaise, involuntary weight loss, pain, night sweats, nausea,

vomiting, headaches, or insomnia) and one of the following at the marked level:

1. Limitation of activities of daily living.
2. Limitation in maintaining social functioning.
3. Limitation in completing tasks in a timely manner due to deficiencies in concentration, persistence, or pace.

Claimant has submitted blood tests that show elevated HIV viral loads and significant depressions in his immune system. Claimant credibly testified to several signs of HIV infection, including fatigue, fever, malaise, weight loss and night sweats. While claimant has had symptoms of diarrhea lasting more than 1 month, claimant has not lost more than 10% of his weight, and thus could not satisfy that prong of the listing. However when examining part K, it is found that these symptoms are enough if claimant has marked limitations in his activities of daily living.

Claimant testified credibly that he is unable to complete these activities. Claimant is unable to cook for himself. Claimant is not able to grocery shop for himself. While claimant can occasionally complete some household chores, claimant generally does not have the energy to complete most chores. Claimant receives help from his family members to complete most tasks. Based on claimant's testimony, which was supported by a witness and was found credible, the undersigned holds that the claimant is markedly impaired in his activities of daily living. This is enough to satisfy the listing's requirement of step 3, and a finding of disability is directed.

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 claimant's SDA application, as claimant meets the requirements for the MA-P program, claimant meets the requirements for 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 programs. Therefore, the decisions to deny claimant's application for MA-P and SDA were incorrect.

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

1. The Department is ORDERED to process claimant's MA-P and SDA application and award required benefits, provided claimant meets all non-medical standards as well.
2. The Department is further ORDERED to initiate a review of claimant's disability case in August, 2012.

  
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Robert Chavez  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: August 2, 2011

Date Mailed: August 2, 2011

**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/cl

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