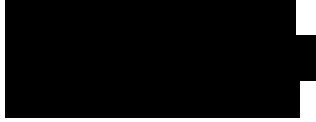


STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201040367

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 April 28, 2010.
- (2) Claimant is 55 years old.
- (3) Claimant has a high school education and two years of college.
- (4) Claimant is not currently working.

- (5) Claimant has a prior work history consisting of an orderly assistant, a customer service representative/baggage handler at [REDACTED], and a stockperson at [REDACTED].
- (6) Claimant performed these jobs at a medium and heavy exertional level.
- (7) Claimant has a history of heart disease, including open-heart surgery and an automatic implanted cardiac defibrillator (AICD).
- (8) On October 5, 2009, claimant was treated at [REDACTED] following a left leg arterial endoscopy. Claimant received an ejection fraction of 25-30 percent.
- (9) On February 1, 2010, claimant was admitted into [REDACTED] with complaint headache with spells of flashes of lights and persistent left sided numbness. Claimant was diagnosed with possible seizure arising from the primary visual cortex with some remaining Todd's paralysis.
- (10) Claimant denied lost of consciousness, bladder or bowel incontinence or jerking movements.
- (11) Brain imaging and CSF analysis were clear. EEG did not show any epileptiform activity or background slowing.
- (12) A review of the systems revealed abnormalities in several areas. Claimant exhibited abnormality in attention span and concentration, language, orientation to time, place, and person, recent and remote memory, muscle strength in the upper and lower extremities, and sensation.
- (13) Claimant was positive for syncope.

- (14) Claimant was discharged on February 5, 2010 with a prescription for Topiramate, a seizure medication.
- (15) On May 8, 2010, claimant was treated at the Emergency Department of [REDACTED] for firing of his AICD while at rest. Claimant reported experiencing mild chest pain 5 minutes prior to firing of his AICD.
- (16) Claimant was diagnosed with run of ventricular premature complexes.
- (17) Claimant exhibited fatigue, chest pain, and shortness of breath.
- (18) Claimant was discharged on May 8, 2010.
- (19) A form DHS-1136, Classification of Patients with Disease of the Heart, was completed by claimant's treating source.
- (20) Claimant was given a Class II & III designation for his Functional Capacity, and a Class C designation for his Therapeutic Classification.
- (21) On May 19, 2010, claimant was treated at the Emergency Department of [REDACTED] for complaint of seizure. Claimant was diagnosed with seizure.
- (22) Claimant reported weakness and total numbness on his left side. Claimant received a score of 1 for his "Motor Arm Left," a score of 2 for his "Motor Leg Left," and a score of 1 for his "Motor Leg Right" of the NIH Stroke Scale.
- (23) Claimant was discharged on May 19, 2009.
- (24) On June 10, 2010, the Medical Review Team denied MA-P and SDA, stating that claimant was capable of performing past relevant work, per 20 CFR 416.920(E).

- (25) On June 17, 2010, claimant filed for hearing.
- (26) On July 2, 2010, the State Hearing Review Team denied MA-P, Retro MA-P and SDA, stating that claimant retained the capacity to perform a wide range of light work, per 20 CFR 416.967(b) and Vocational Rule 202.07, and lack of duration, per 20 CFR 416.909.
- (27) On July 26, 2010, a hearing was held before the Administrative Law Judge.
- (28) Claimant was represented by [REDACTED] of [REDACTED]
[REDACTED]

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

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 \$1,000.

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 heart condition and history of seizures that has more than a minimal effect on the claimant's ability to do basic work activities. Claimant has functional limitations resulting from his heart condition and seizures. In February 2010, claimant was admitted into [REDACTED] for complaint of headache with flashing lights and left sided weakness. Claimant's muscle strength in the lower extremity was 4 out 5. Claimant continued to report of weakness on his left side and fatigue during his two hospital visits in May 2010. Additionally, claimant was unable to discern sharp/soft on left side face and extremities. These symptoms limit claimant's aptitude for walking, carrying, and lifting. Claimant thus easily 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.

After considering the listings contained in Section 11.00 (Neurological), the Administrative Law Judge finds that the claimant's medical records do not contain medical evidence of an impairment that meets or equals a listed impairment. Section 11.00 provides different requirements for grand mal and petite mal epilepsy. In the present case, there is no medical evidence in the record indicating the type of epilepsy that claimant experienced. However, at the hearing, claimant testified that his sister witnessed his May 19, 2010 seizure episode and noted convulsion, which may be indicative of grand mal seizures. Nevertheless, regardless of the type of epilepsy that claimant experienced, there is insufficient medical evidence to support a finding of disability under this listing. A listings disability finding for convulsive or grand mal epilepsy requires, among other factors, occurrence of seizures more frequently than once a month, in spite of at least 3 months of prescribed treatment. Similarly, a listings disability finding for non-convulsive or petit mal epilepsy requires occurrence of seizures more frequently than once weekly, in spite of at least 3 months of prescribed treatment. Claimant's medical records only contain evidence of two seizure episodes, in February and May, 2010. Therefore, claimant does not meet the listings for epilepsy and the Administrative Law Judge cannot find claimant disabled for epilepsy.

However, the great weight of the evidence of record finds that claimant's heart condition meets or equal the listings for mental impairments contained in section 4.00 (Cardiovascular System).

Appendix 1 of Subpart P of 20 CFR 404, Section 4.00 has this to say about chronic heart failure:

Chronic heart failure is the inability of the heart to pump enough oxygenated blood to body tissues. This syndrome is characterized by symptoms and signs of pulmonary and systemic congestion (fluid retention) or limited cardiac output. Certain laboratory findings of cardiac functional and structural abnormality support the diagnosis of CHF.

Predominant systolic function (the ability of the heart to contract normally and expel sufficient blood), which is characterized by a dilated, poorly contracting left ventricle and reduced ejection fraction (abbreviated EF, it represents the percentage of the blood in the ventricle actually pumped out with each contraction).

To establish that you have chronic heart failure, your medical history and physical examination should describe characteristic symptoms and signs of pulmonary or systemic congestion or of limited cardiac output associated with the abnormal findings on appropriate medically acceptable imaging.

Symptoms of congestion or of limited cardiac output include easy fatigue, weakness, shortness of breath (dyspnea), cough, or chest discomfort at rest or with activity. Individuals with CHF may also experience shortness of breath on lying flat (orthopnea) or episodes of shortness of breath that wake them from sleep (paroxysmal nocturnal dyspnea). They may also experience cardiac arrhythmias resulting in palpitations, lightheadedness, or fainting.

4.02 Chronic heart failure: while on a regimen of prescribed treatment, with symptoms and signs described in 4.00D2. The required level of severity for this impairment is met when the requirements in both A and B are satisfied.

A. Medically documented presence of one of the following:

1. Systolic failure, with left ventricular end diastolic dimensions greater than 6.0 cm or ejection fraction of 30 percent or less during a period of stability (not during an episode of acute heart failure); or
2. Diastolic failure, with left ventricular posterior wall plus septal thickness totaling 2.5 cm or greater on imaging, with an enlarged left atrium greater than or equal to 4.5 cm, with normal or elevated ejection fraction during a period of stability (not during an episode of acute heart failure);

AND

B. Resulting in one of the following:

1. Persistent symptoms of heart failure which very seriously limit the ability to independently initiate, sustain, or complete activities of daily living in an individual for whom an MC, preferably one experienced in the care of patients with cardiovascular disease, has concluded that the performance of an exercise test would present a significant risk to the individual; or...

In order to meet or equal the listings for chronic heart failure, a claimant must either meet or equal the recommended listings contained in both the A and B criteria. A careful examination of claimant's medical records, supplied from a treating source and claimant's testimony at the hearing, show claimant meets both the A and B criteria.

On October 5, 2009, claimant was seen at the [REDACTED].

Claimant visited the clinic for a follow-up after undergoing left leg arterial endoscopy. Claimant had an ejection fraction of merely 25 to 30 percent, during a period of stability. As this ejection fraction score meets the requirement of 4.02(A)(2), the undersigned holds that claimant meets or equals the listings found in the A criteria.

In regards to the B criteria, claimant's medical records contain no evidence that meet or equal subsections 2 and 3. There is no evidence that claimant experienced three or more separate episodes of acute congestive heart failure within a consecutive 12 month period, and there is no medical evidence of an inability to perform on an exercise tolerance test at a workload equivalent to 5 METs or less.

In relation to an exercise tolerance test, claimant reported during the hearing that his treating sources advised against an exercise tolerance test. The Administrative Law Judge finds claimant's report credible. Claimant testified that he does not participate in household chores nor goes grocery shopping. Claimant also testified that he only leaves his home for appointments. Additionally, claimant's medical records contain

several reports of left sided weakness, which limits claimant's mobility. Furthermore, claimant reported that mild physical exertion, such as walking up a small slope, has caused his AICD, or defibrillator, to fire. More importantly, on May 8, 2010, claimant was treated at the Emergency Department of [REDACTED] for firing of his AICD while he was at rest. Therefore, claimant's inability to engage and complete an exercise tolerance test is supported by substantial evidence. As a claimant's inability to engage in activities of daily living and an exercise tolerance test is listed as condition that satisfies the B criteria, the Administrative Law Judge holds that claimant has an impairment that meets the B criteria.

As claimant meets both the A and B criteria, the Administrative Law Judge holds that claimant meets or equals the listings contained in section 4.00, 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 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 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 August, 2011.



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

Date Signed: 08/11/2010

Date Mailed: 08/11/2010

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:

