

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201110929
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 28, 2011
Macomb County DHS

ADMINISTRATIVE LAW JUDGE: [REDACTED]

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 April 28, 2011.

ISSUE

Was the denial of claimant's application for MA-P and retroactive MA-P 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 retroactive MA-P on July 15, 2010.
- (2) Claimant is 50 years old.
- (3) Claimant is not currently working.
- (4) Claimant has a history of chronic obstructive pulmonary disease (COPD).
- (5) Claimant is 63 inches tall.

- (6) A pulmonary function test conducted on August 23, 2010 gave claimant an FEV1 score of 0.74, after bronchodilators had been administered.
- (7) Claimant complains of symptoms including extreme shortness of breath, as well as tiredness, inability to exert herself, and wheezing.
- (8) On September 8, 2010, the Medical Review Team denied MA-P and retroactive MA-P, stating that claimant did not have a severe impairment.
- (9) On November 24, 2010, claimant filed for hearing.
- (10) On January 24, 2011, the State Hearing Review Team denied MA-P, and retroactive MA-P; SHRT ignored the results of claimant's FEV1 testing, inexplicably stating that it non-reproducible, in contravention to the definition of reproducible.
- (11) On April 28, 2011, a hearing was held before the Administrative Law Judge.
- (12) Claimant was represented by [REDACTED] of [REDACTED]
[REDACTED]

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), 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 they are 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 COPD that has more than a minimal effect on the claimant's ability to do basic work activities. Claimant has functional limitations resulting from COPD. Claimant has had several hospital admissions relating to COPD symptoms. Claimant testified, credibly, that she is unable to exert herself in a significant manner. Objective medical testing shows that claimant's symptoms could reasonably interfere with physical tasks necessary at some jobs; therefore claimant passes step 2 of the 5 step sequential 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 3.00 (Respiratory), the great weight of the evidence of record finds that claimant's COPD meets or equal the listings for respiratory impairments.

Appendix 1 of Subpart P of 20 CFR 404, Section 3.00 has this to say about chronic pulmonary insufficiency:

Chronic obstructive pulmonary disease due to any cause, with the FEV1 equal to or less than the values specified in table I corresponding to the person's height without shoes.

Table I states that a claimant of the claimant's height, 63 inches, must have an FEV1 value of 1.15 or less in order to meet the listing criteria. A careful examination of claimant's medical records, supplied from an independent medical examination, show claimant meets the criteria.

On August 23, 2010, claimant underwent a pulmonary function test by Department order. This test was performed by a competent physician, and met all criteria for being valid under the listing. On this test, claimant's FEV1 score was measured at 0.74. This number is below the threshold established by the listings criteria, and therefore, claimant meets this listing.

Strangely enough, SHRT was aware of this test, and held that claimant did not meet the listings. SHRT claimed that the results were not reproducible. A value is considered reproducible if it does not differ from the largest value by more than 5 percent or 0.1 L, whichever is greater. Appendix 1 of Subpart P of 20 CFR 404, Section 3.00(E). Claimant's values, after bronchodilation, in this test were .74, .39, and .73. While the second test was clearly not reproducible, the first and third tests were. The undersigned therefore wonders whether SHRT is using a different definition of reproducible.

As claimant meets pulmonary function criteria, the Administrative Law Judge holds that claimant meets or equals the listings contained in section 3.00, 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.

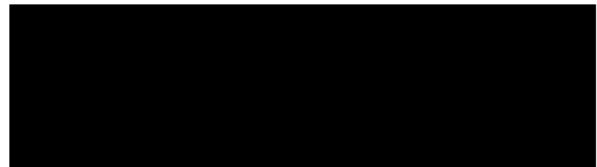
With regard to steps 4 and 5, when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920. Therefore, the Administrative Law Judge sees no reason to continue his analysis, as a determination can be made at step 3.

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 program. Therefore, the decisions to deny claimant's application for MA-P and retroactive MA-P 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 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 June 2012.



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

Date Signed: 05/31/11

Date Mailed: 06/02/11

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:

[REDACTED]

Macomb County DHS (Dist #12) / DHS-1843

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Administrative Hearings