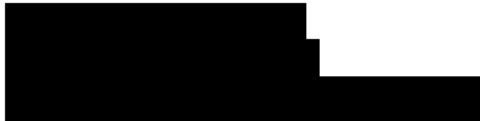


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201113400
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 11, 2011
Oakland 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 May 11, 2011.

ISSUE

Was the denial of claimant's application for 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 on July 21, 2009.
- (2) Claimant is 32 years old.
- (3) Claimant has an 11th grade education.
- (4) Claimant is not currently meeting substantial gainful activity requirements.
- (5) Claimant's impairments have prevented him from working more hours.

- (6) Claimant is only capable of working a few hours per week due to symptoms of fatigue, malaise, and other multiple sclerosis symptoms.
- (7) Claimant has been diagnosed with multiple sclerosis.
- (8) Claimant has had several MRI's which show the typical nervous system plaques associated with multiple sclerosis.
- (9) Simple activities often leave claimant fatigued.
- (10) While claimant is capable of doing some tasks for short periods of time, repetitive actions, or longer periods of time without resting, will often leave claimant fatigued, with intractable headaches, nausea, and loss of motor function, especially in his left leg.
- (11) Medical records note that claimant walks with a slightly spastic gait.
- (12) Claimant's left leg tends to drag on repetitive actions, such as walking.
- (13) On October 28, 2010, the Medical Review Team denied MA-P, stating that claimant was capable of performing past relevant work.
- (14) On December 30, 2010, claimant filed for hearing.
- (15) On January 3, 2011, the State Hearing Review Team denied MA-P, and Retro MA-P, stating that claimant was capable of other work and using vocational rule 203.25 as a guide.
- (16) On May 11, 2011, a hearing was held before the Administrative Law Judge.
- (17) Claimant was represented at hearing by [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 \$1000.

In the current case, claimant has testified that he is not engaging in SGA, 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 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 multiple sclerosis that prevents claimant from engaging in work related activities. Claimant has severe fatigue issues that interfere with work activities. Claimant has trouble with walking and lifting; doing strenuous activities often results in fatigue that can affect claimant for days. Claimant has attempted to hold jobs in the past; claimant’s residual effects from MS flare ups prevent claimant from holding a job. Claimant is only able to do his current job by working few hours per week. Claimant has memory problems that interfere with his current job performance. Claimant has intractable headaches that prevent claimant from working on some days; claimant has had to take reduced responsibilities at work. Fatigue and repetitive motion will cause claimant’s left foot to drag. All of these symptoms are definitively linked in claimant’s medical records as symptoms from multiple sclerosis.

These limitations are 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 11.00 has this to say about neurological diseases:

11.09 *Multiple sclerosis*. With:

- A. Disorganization of motor function as described in 11.04B;
or
- B. Visual or mental impairment as described under the criteria in 2.02, 2.03, 2.04, or 12.02; or
- C. Significant, reproducible fatigue of motor function with substantial muscle weakness on repetitive activity, demonstrated on physical examination, resulting from neurological dysfunction in areas of the central nervous system known to be pathologically involved by the multiple sclerosis process.

Claimant's medical records support claimant's allegations of multiple sclerosis. Claimant has had MRI's that show multiple nervous system plaques indicative of MS, and other medical records show the fatigue commonly associated with claimant's impairment. Claimant testifies to fatigue of motor function on repetitive activity, especially in his left leg; this testimony has been documented in medical examinations.

A medical examination in April, 2011 documented significant weakness in claimant's left leg; prior examinations in 2009 and 2010 documented persistent symptoms of weakness and fatigue in claimant's legs, difficulty performing multiple

tasks, intractable headaches, difficulty walking for extended periods and trouble regulating body temperature. Claimant is unable to hold anything heavy. Claimant's treating sources note that claimant walks with a spastic gait, as a result of motor fatigue. Claimant testified that this gait becomes pronounced after repetitive movements, such as walking. A DHS-49 filled out on April 25, 2011, noted that claimant could only do repetitive movements on a restricted basis.

The undersigned believes that these exams, conducted by competent medical personnel, shows that the claimant's MS symptoms show significant reproducible fatigue with substantial muscle weakness on repetitive activity. Therefore, the undersigned finds that claimant meets or equals the C part of listing 11.09 and therefore meets step three of the five step process. As claimant meets step 3, a finding of disabled 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.

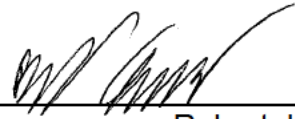
DECISION AND ORDER

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 decision to deny claimant's application for MA-P was 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.



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

Date Signed: 06/20/11

Date Mailed: 06/20/11

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:

