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

IN THE MATTER OF:

Reg. No: 201118886

Issue No: 2009

Case No:

Load No: 8218000000

Hearing Date:

Wayne County DHS

ADMINISTRATIVE LAW JUDGE:

## 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

#### 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
- (2) Claimant is years old.
- (3) Claimant has an education with a history of special education.
- (4) Claimant is not currently working.

(5) An IQ test conducted on the claimant on concluded that claimant had a verbal IQ in the 67-79 range, and a full scale IQ in the 69-78. Both were considered borderline scores.

- (6) This testing was considered valid.
- (7) Claimant's treating source notes that he has a 75% stenosis of the lower aorta, and is restricted from doing any physical activity; this was confirmed by an independent examination.
- (8) On the Medical Review Team denied MA-P and SDA, stating that claimant was capable of doing other work.
- (9) On claimant filed for hearing.
- (10) On the State Hearing Review Team denied MA-P, Retro MA-P, and SDA, stating that claimant was capable of other work.
- (11) On \_\_\_\_\_, a hearing was held before the Administrative Law Judge.

  CONCLUSIONS OF LAW

The State Disability Assistanc e (SDA) program which provides financial assistance for disabled persons is estab lished by 2004 PA 344. The Department of Human Services (DHS or D epartment) administers the SDA program pursuant to M CL 400.10, et seq., and MAC R 400.3151-400.3180. De partment 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 es tablished by Title XI X 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 t he 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 s equential 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 analys is of subsequent steps are necessary. 20 CFR 416.920

The first step that must be considered is w hether the claimant is still partaking in Substantial Gainful Activity (SGA). 20 CF R 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A pers on who is earning more than a certain monthly amount (net of impai rment-related work expenses) is ordinarily considered to be engaging in SGA. The am ount of monthly earnings considered as SGA depends on

the nature of a person's disa bility; the Social Security Act specifies a higher SGA amount for statutorily b lind 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

In the current case, claimant has testif ied 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 CF R 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 per form 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 (6 th 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 on by 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 pres ented more than sufficient evidence of aortic dysfunction that prevents claimant from engaging in wo rk related ac tivities. The Department's own examination, confirmed that claim ant's lower aorta was 75% occluded, and that claimant should not be performing any physical activity. Claimant has trouble with walking and lifting.

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

In the third step of the s equential evaluation, we must determine if the claimant's impairment is listed in Append ix 1 of Subpart P of 20 CFR, Part 404. 20 CF R 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 dis abled"; 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 12.00 has this to say about mental disorders:

For (12.05) paragraph C, we will ass ess the degree of functional limitation the additi onal impairment(s) imposes to determine if it significantly li mits your physical or mental ability to do basic work activ ities, i.e., is a "s evere" impairment(s), as defined in §§ 404.1520(c) and 416.920(c). If the additional impairment(s) does not cause limitations that are "severe" as defined in §§ 404.1520(c) and 416.920(c), we will not find that the additional impairment(s) imposes "an additional and signific ant work-related limitation of function," even if you are unable to do your past work because of the unique features of that work;

**12.05 Mental retardation**: Mental retardation ref ers to significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; i.e., the evidence demonstrates or supports onset of the impairment before age 22.

The required level of severity for this disor der is met when the requirements in A, B, C, or D are satisfied...

C. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or ot her mental impairment imposing an additional and s ignificant work-related limitation of function.

The listings of this section clearly define a listings level disability as having a full scale IQ in the 60s and an add itional severe impairment, as defined by step 2 of our sequential disability process. Claimant has submitted records that show claimant to have a verbal IQ in the 67-79 range, and full scale IQ score in the 69-78 range. This report shows that this condition has been present for the claimant's entire life. Claimant was in special education in school, and was not able to continue past the 8 th grade.

Claimant has trouble with verbal comprehension and basic math skills. While these scores are a range, and on some days in some tests, claimant's IQ would fall above the required listing range, the under signed believes that, because the range still falls below the threshold at the lower end, and claimant's functioning in this area is described as "borderline", claimant still meets or equals this listing. Furthermore, the evidence clearly supports onset of this impairment before the age of

Furthermore, claimant's aortic occlusion, as stated above, clearly is a severe impairment under step 2 of the regulations. Testing shows that this impairment has s more than a minimal impact on basic—work activities. This is enough to satisfy the listings 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 J udge sees no reason to c ontinue his analysis, as a determination can be made at step 3.

With regard to the SDA progr am, a per son 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 financ ial and non-financial eligibility criteria are found in BEM 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 decisi on in the above stated matter is, hereby, REVERSED.

The Department is ORDERED to process claimant's MA-P and SDA applic ation and award required benefits, provided claim—ant meets all non-medical standards as well. The Department is further ORDERED to in—itiate a review of claimant's disability

case in

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

Date Signed: 05/04/11

Date Mailed: 05/04/11

**NOTICE**: Administrative Hearings may or der 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 Hear ings will not orde rarehearing or reconsideration on the Department's moint to make 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 ti mely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

### RJC/dj

CC:

Wayne County DHS (Dist #18) / DHS-1843

Administrative Hearings