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

IN THE MATTER OF:

[redacted]

Reg. No: 201122679
Issue No: 2009
Case No: [redacted]
Load No:
Hearing Date:
June 9, 2011
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 June 9, 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 October 29, 2010.

(2) Claimant is 55 years old.

(3) Claimant has an 11th grade education.

(4) Claimant is not currently meeting substantial gainful activity requirements.

(5) Claimant's prior work history consists of construction work performed at the medium to heavy functional level.

(6) Claimant has been diagnosed with uncontrolled diabetes with vision problems and neuropathy, bipolar disorder with psychotic features, and seizures, possibly secondary to a stroke claimant suffered in [redacted].

(7) Claimant does not have insurance for medication to combat the seizure disorder.

(8) Records show that claimant is having seizures on average of once per week.

(9) Claimant's seizures manifest themselves through loss of consciousness, left side motor loss, and numbness.

(10) Claimant's seizures are supported by the medical record.

(11) On November 29, 2010, the Medical Review Team denied MA-P, stating that claimant was capable of performing past relevant work.

(12) On February 28, 2011, claimant filed for hearing.

(13) On March 23, 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 203.14 as a guide.

(14) On June 9, 2011, a hearing was held before the Administrative Law Judge.

(15) 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 uncontrolled diabetes, seizures and residual effects from a [redacted] stroke that prevents claimant from engaging in work related activities. Claimant has neuropathy and vision problems that interfere with work activities. Claimant has trouble with walking and lifting; claimant has numbness that affects the left side that prevents claimant from effectively using those limbs. Claimant further more has seizures, on average of once per week; these seizures interfere with claimant's judgment and concentration.

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:

> **11.03** ***Epilepsy - nonconvulsive epilepsy (petit mal, psychomotor, or focal), documented by detailed description of a typical seizure pattern including all associated phenomena, occurring more frequently than once weekly in spite of at least 3 months of prescribed treatment.*** With alteration of awareness or loss of consciousness and transient postictal manifestations of unconventional behavior or significant interference with activity during the day.

Claimant has medically documented seizures that were most likely secondary to a stroke claimant suffered in [redacted]. Claimant’s description of these seizures, as well as third party testimony describing these seizures, most closely resembles those of listing 11.03. Furthermore, claimant has submitted a seizure log, kept by his wife, which documents the date, place and time of the seizures in question. The undersigned finds this log both credible and relevant. Based on the testimony presented at the hearing, the credible medical evidence, and the documentation kept by the claimant, the undersigned rules it more likely than not that claimant is having seizures, most closely resembling seizures listed in the petit mal seizure listing at least once per week on average.

However, claimant is not taking any medication with which one would control seizures. The evidence of record shows that claimant is taking insulin to control his diabetes (which is so far, uncontrolled), some cholesterol lowering medication, and aspirin. Listing 11.03 requires the continuation of seizures for a period of three months, despite claimant following proscribed treatment. Despite the nature, frequency and severity of the attacks, it cannot be reasonably disputed that claimant is following proscribed treatment.

However, claimant testified, quite credibly, that he does not have insurance with which to seek proper treatment. Given that the entire purpose of the hearing was to determine whether claimant was eligible for MA insurance benefits, the undersigned finds this testimony reasonable. Furthermore, claimant has several other health issues, including diabetes which is not reasonably controlled, neuropathy that prevents walking significant distances, and bipolar disorder, with psychotic features. Therefore, given that claimant is following his treatment as well as he is financially able, and in light of claimant's other impairments, the undersigned finds that claimant equals the listings of 11.03, if he does not meet them precisely. Claimant's combination of impairments and chances for reasonable treatment equal the intent of the listing, if not the precise wording.

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: 06/29/11

Date Mailed: 06/30/11

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]