

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

IN THE MATTER OF:



Reg. No.: 2011-24840
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: August 15, 2011
County: Oakland (63-03)

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, an in-person hearing was held on August 15, 2011, at the Department of Human Services (Department) office in Oakland County, Michigan, District 03. Claimant was represented at hearing by [REDACTED].

ISSUE

Was the denial of claimant's application for Medical Assistance (MA-P), State Disability Assistance (SDA), and retroactive MA-P benefits 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, SDA, and retroactive MA-P on June 20, 2008.
2. Claimant is 25 years old.
3. Claimant has a 12th grade education.
4. Claimant has a work history consisting of office assistant, grocery store bagger, and sales representative.
5. Claimant is not currently engaged in substantial gainful activity (SGA).
6. In August, 2011, claimant sought medical treatment for an anxiety attack.

7. Claimant also related a history of seizures, but had stopped taking medications two months prior; none of these seizures are documented.
8. In [REDACTED] claimant was admitted to the hospital after a bee sting triggered seizure activity; claimant had begun taking prescribed medications at that time.
9. Claimant's treating source indicated that claimant had a temporary disability, and mentioned seizures, noting that claimant could expect to return to work in [REDACTED].
10. In [REDACTED], claimant was admitted to the ER for complications secondary to pneumonia.
11. No other medical records were submitted from this time period.
12. A letter dated [REDACTED], indicates that claimant was being treated for psychiatric conditions, but this letter does not state that claimant has any work-related impairments as a result of psychiatric conditions.
13. A mental status examination from [REDACTED] indicates an episode of decompensation in [REDACTED], but also notes that claimant was in no distress, had no evidence of a thought disorder, had intact memory, euthymic mood, and had adequate sleep, appetite, and self care.
14. Claimant held a job and made SGA during the time period of January through September 2009.
15. No current psychiatric records were submitted.
16. Claimant testified to reflex sympathetic dystrophy and associated pain, but submitted no evidence regarding this condition.
17. CT and X-rays from [REDACTED] of the chest, arm, ankle, heart, and head were all normal.
18. On May 12, 2009, the Medical Review Team denied MA-P, stating that claimant was capable of other work.
19. On July 29, 2009, claimant filed for hearing.
20. On April 1, 2011, the State Hearing Review Team (SHRT) denied MA-P, stating that claimant was capable of performing other work.
21. On August 15, 2011, a hearing was held before the Administrative Law Judge.

22. Claimant submitted additional evidence at the hearing; this was resubmitted to SHRT.
23. On March 15, 2012, SHRT again denied MA-P, stating that claimant was capable of other work.

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 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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (Department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in BAM, BEM and 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 SGA 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 is necessary. 20 CFR 416.920.

The first step that must be considered is whether the claimant is still partaking in 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 2011 is \$1,640. For non-blind individuals, the monthly SGA amount for 2011 is \$1,000.

In the current case, claimant testified that he is not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. While claimant testified that he was working for at least 9 months during the year 2009, which was during the course of his application, for the sake of argument, the Administrative law Judge will proceed to the next step. Therefore, the undersigned holds that claimant is not performing SGA and passes step one of the five-step 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 not presented evidence of a severe impairment that has lasted or is expected to last the durational requirement of 12 months.

Claimant has alleged an impairment stemming from a seizure disorder, sympathetic reflex dystrophy, and an anxiety disorder.

With regards to the sympathetic reflex dystrophy, the undersigned notes that claimant submitted no records to support his claim and, therefore, the condition will not be considered.

There are very few medical records of seizures; the only medical record of a seizure is from [REDACTED], when claimant entered the ER after having a seizure in response to a bee sting. There is no medical documentation of seizures before this time. Claimant alleged a history of seizures during an ER admittance in [REDACTED]; however, this statement to medical authorities is not corroborated by any medical documentation and, given that the Administrative Law Judge did not find claimant to be highly credible, puts very little weight on an incidental history statement given to the ER for an admittance on an unrelated condition. Therefore, the undersigned holds that claimant has not presented evidence that his seizure impairment rises to the level of a severe impairment.

As a note, while claimant admittedly submitted a DHS-49 from a treating source, which stated claimant could return to work in [REDACTED] (thus giving rise to the inference that claimant could not work before that date), the Administrative Law Judge notes that no physical or mental limitations were listed on that form, and that only a vague statement of "seizures uncontrolled" was stated as to why claimant could not return. There was no indication of when claimant had these seizures, the frequency of these seizures, what mental or physical limitations the seizures gave claimant, or whether this treating source was the proper treating source for this condition.

Therefore, the Administrative Law Judge, having considered the DHS-49 in question, chooses to give it little to no weight with regards to establishing whether claimant has a severe impairment.

Furthermore, it should be noted that claimant had several CT and x-rays performed during [REDACTED]; all tests came back normal with no indications of any abnormalities.

Finally, with regard to psychological limitations, the medical evidence consists of an ER admittance in [REDACTED] for an anxiety attack, a [REDACTED] psychological examination that noted claimant to have had one episode of decompensation in [REDACTED] and a note from [REDACTED] that did not state whether claimant had any limitation from his psychological condition.

The [REDACTED] psych report noted that claimant was in no distress, had no evidence of a thought disorder, had intact memory, euthymic mood, and had adequate sleep, appetite, and self care. This report noted nothing that could be said to be a work-related impairment.

Claimant's allegations of work-related impairments are further deflated by claimant's own testimony, which noted that claimant was working during this period of decompensation and, indeed, returned to work soon after that, continuing work until at

least September 2009 with no alleged breaks. If claimant did have a psychological impairment during this period, claimant certainly would not meet durational requirements. At the very least, the Administrative Law Judge is skeptical that claimant's psychological impairments impacted his work-related activities, as claimant, through his own testimony, worked before and after his period of decompensation.

Furthermore, claimant left work, by his own testimony, not because of psychological limitations, but due to increase seizure activity. However, as stated above, there is not competent evidence to determine whether claimant was even having seizures at this time.

As a final note, it should be noted that claimant did not testify to any mental impairments at the hearing.

Therefore, the Administrative Law Judge holds that claimant has not presented competent evidence that he still has a psychological impairment that would prevent work-related activities for a period of 12 months or more.

Claimant has not presented the required competent, material, and substantial evidence which would support a finding that claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c).

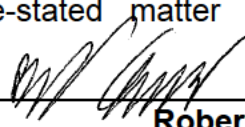
The medical record as a whole does not establish any impairment that would impact claimant's basic work activities for a period of 12 months. There are no current medical records in the case that establish that claimant has, or continues to have, a serious medical impairment. There is no objective medical evidence to substantiate claimant's claim that the impairment or impairments are severe enough to reach the criteria and definition of disabled. Accordingly, after careful review of claimant's medical records, this Administrative Law Judge finds that claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

With regards to the SDA program, the only medical evidence given weight that establishes a severe impairment is the psychological report of [REDACTED], noting a period of decompensation in [REDACTED]. However, claimant had returned to work by that point and, therefore, claimant does not meet the durational requirement for the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant is not disabled for the purposes of the MA and SDA programs. Therefore, the decision to deny claimant's MA-P and SDA application was correct.

Accordingly, the Department's decision in the above-stated matter is, hereby, AFFIRMED.



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

Date Signed: May 16, 2012

Date Mailed: May 17, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

RJC/pf

cc:

