

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 20112891

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 7, 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 February 7, 2011.

ISSUE

Was the denial of claimant's application for MA-P, SDA 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, SDA, and retroactive MA-P on May 7, 2010.
- (2) Claimant is 49 years old.
- (3) Claimant has an 11th grade education.
- (4) Claimant is not currently working.
- (5) Claimant has a prior work history consisting of home health care and drywall work.

- (6) Claimant performed these jobs at the light, medium, and heavy exertional level.
- (7) Claimant has a history of a fracture of the distal radius, beginning in [REDACTED].
- (8) Claimant had surgical intervention in [REDACTED] for this impairment.
- (9) Claimant requires further surgical intervention to heal this injury.
- (10) Independent exams show that claimant continues to have an impairment involving a fracture of an upper extremity that is under surgical care towards restoring function to that extremity, which was not healed within 12 months of the injury.
- (11) On May 28, 2010, the Medical Review Team denied MA-P, SDA and retroactive MA-P, stating that claimant did not have a serious impairment that could be expected to last more than 12 months.
- (12) On June 2, 2010, claimant filed for hearing.
- (13) On November 10, 2010, the State Hearing Review Team denied MA-P, SDA, and retroactive MA-P, stating that claimant did not have a serious impairment that would meet the durational requirement of 12 months.
- (14) On February 7, 2011, a hearing was held before the Administrative Law Judge.

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 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. 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.

Claimant has a confirmed fracture of the right distal radius, under continuing surgical management. Independent examinations show that claimant has no use of the right arm. By the time of the hearing, it was likely claimant would not recover within 12 months, and at the time of this writing, it has been confirmed that claimant has not recovered. Claimant has a serious impairment with regards to lifting, reaching and fine manipulation, which impairs on many work related activities. Therefore, claimant passes step two of the five step process, thanks to the fact that the undersigned can conduct a *de novo* review of claimant's situation.

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 1.00 (Musculoskeletal), the great weight of the evidence of record finds that claimant's fracture meets the required listing.

Appendix 1 of Subpart P of 20 CFR 404, Section 1.00 has this to say about fractures of upper extremities:

1.07 Fracture of an upper extremity with nonunion of a fracture of the shaft of the humerus, radius, or ulna, under continuing surgical management, as defined in 1.00M, directed toward restoration of functional use of the extremity, and such function was not restored or expected to be restored within 12 months of onset.

There is no dispute that claimant has a fracture of the shaft of the distal radius. Claimant is under continuing surgical management, directed towards restoration of functional use of the extremity. Because claimant has no insurance with which to pay for a surgery, function is not expected to be restored within 12 months of onset.

Therefore, there is no dispute that claimant meets the requirements for 1.07. While the State Hearing Review Team dismissed claimant's impairment as having no limitations other than limited use of the right wrist, listing 1.07 deals specifically with cases of limited use of the right wrist, making the denial by SHRT somewhat puzzling.

As claimant therefore meets the criteria for upper extremity fractures, the Administrative Law Judge holds that claimant meets or equals the listings contained in section 1.00, 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.

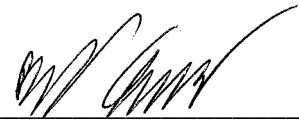
With regards to the SDA program, the undersigned notes that as claimant meets the requirements for the SSI program, claimant therefore meets all requirements of the SDA program as well.

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 program. Therefore, the decisions to deny claimant's application for MA-P, SDA 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/SDA 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 May, 2012.



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

Date Signed: 05/16/11

Date Mailed: 05/18/11

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:

