

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-34723
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: September 1, 2011
County: Wayne (82-43)

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 September 1, 2011, at the Department of Human Services (Department) office in Wayne County, Michigan, District 43. Claimant was represented at hearing by [REDACTED]. The Department was represented 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 November 30, 2010.
2. Claimant is 48 years old.
3. Claimant has a 12th grade education with an advanced degree.
4. Claimant has an alleged work history consisting of political consultant, though no such job was found in claimant's SSA work history report.
5. Claimant is not currently engaged in substantial gainful activities (SGA).
6. On [REDACTED] claimant was admitted to the hospital with a right intraparenchymal hemorrhage.

7. At the time, claimant had left-side deficit, some difficulties with basic mathematical functions, and some mid-term memory loss.
8. Claimant was able to perform all activities of daily living at the time.
9. Claimant was fully orientated to time and place.
10. Claimant had some impaired concentration issues at the time and some problems with verbal expression.
11. Claimant was noted to be improving upon discharge.
12. In [REDACTED], claimant was admitted to the ER for a headache secondary to hypertension.
13. Claimant was noted to be “doing well”, was negative for weakness, had normal speech and behavior, with normal cognition and memory.
14. Claimant testified to continuing memory problems, especially memorizing long lists and names, and disorientation.
15. No other medical records were submitted that document any continuing symptoms from the claimant.
16. There are no current records that document whether claimant’s cerebrovascular accident in [REDACTED] continues to provide work-related limitations, or gave limitations for a period of 12 months.
17. Claimant submitted no current mental status examinations.
18. Claimant submitted no records that showed any continuing physical issues.
19. On January 20, 2011, the Medical Review Team denied MA-P, stating that claimant was capable of other work.
20. On May 20, 2011, claimant was sent a notice of case action.
21. On May 20, 2011, claimant filed for hearing.
22. On June 21, 2011, the State Hearing Review Team (SHRT) denied MA-P and SDA, stating that claimant was capable of other work.
23. On September 1, 2011, a hearing was held before the Administrative Law Judge.
24. Claimant submitted additional evidence at the hearing; this was resubmitted to SHRT.

25. On April 4, 2012, SHRT again denied MA-P and SDA, 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 substantial gainful activity (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. 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 cerebrovascular accident (CVA) that occurred in [REDACTED].

There are very few medical records of the CVA; the only records in the case are at claimant's initial admission. While the undersigned believes that claimant's impairment was quite serious at the time, regulations require that the impairment last, or be expected to last, at least 12 months. There are no medical records in the file that show this to be the case.

Claimant was admitted in [REDACTED]. At the time, claimant had left-side weakness, difficulties with mathematics, difficulties with comprehension, and mid-term memory difficulties. Claimant was oriented to time and place, and could solve problems;

claimant also was able to fully recall objects in the short term, and had adequate reading comprehension.

Claimant was noted at the time to be improving.

No other records were submitted regarding whether this impairment persisted. It should be noted that a source statement was submitted in [REDACTED] which noted some persistent difficulties, but this statement was not signed by a treating source (this source first examined the claimant on the same day) and did not indicate whether claimant was improving. The Administrative Law Judge decides to give this statement very little weight with regards to duration, as it was not submitted by a treating source and gives no indication to future prognosis.

In [REDACTED], claimant went to the emergency room with regard to a headache secondary to hypertension. In the ER notes, it was stated that claimant was orientated, had no comprehension issues, and had fully intact cognition and memory. Claimant's headache was most likely caused by medication non compliance. No weakness or other deficits in connection with the CVA were mentioned.

There are no other relevant medical records in the file, and certainly no records that show claimant continues to have an impairment related to the CVA.

While claimant testified to some memory issues, claimant was not particularly specific and has not backed up these allegations with substantive medical records. The Administrative Law Judge observed no symptoms. Therefore, as there are no medical records to show that claimant's impairment persists, or has persisted for at least 12 months, the undersigned holds that claimant has failed to meet his burden of proof in showing that his impairment meets durational requirements.

Claimant must show through competent medical evidence that he has a severe impairment that is expected to last. The medical evidence on record shows that claimant was improving at the time of initial impairment, claimant presented with no signs of impairment seven months later, and an examination by a non-treating source a month later did not opine as to whether claimant could be expected to improve.

Therefore, the Administrative Law Judge holds that claimant has not presented competent evidence that he still has a psychological or physical 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 he 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, there is no evidence that claimant had a severe impairment that would last 90 days or more. With regard to the above-mentioned medical report, the undersigned admits that the source states that claimant's impairments can be expected to last 90 days. However, as that source was not a treating source and had only examined claimant once, the undersigned gives the report very little weight. There is no other evidence in the packet to show that claimant's impairments would last 90 days, especially considering that claimant was noted to be improving and presented in April with no signs.

Furthermore, even if the undersigned proceeded through the full five-step process with regard to the SDA, claimant admitted under oath that he could perform most of the functions of his prior job, which was allegedly highly skilled. While claimant may not be able to perform precisely at that job, if the undersigned were to take claimant's testimony in the best possible light, ignoring the medical evidentiary requirements, at the very least, claimant would be restricted to no less than a sedentary job—claimant testified to no sitting restrictions, no pain at current, and very few memory restrictions—and, therefore, be directed to a finding of not disabled due to the appropriate medical vocational rule.

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: June 7, 2012

Date Mailed: June 11, 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:

