

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2011-44371  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: December 8, 2011  
County: Wayne (82-41)

**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 equest for a hearing. After due notice, a hearing was held on December 8, 2011, at the Department of Human Services' (Department) office in Wayne County, Michigan, District 41. 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) 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 on November 18, 2010.
2. Claimant is 52 years old.
3. Claimant has a marginal education and speaks no English.
4. Claimant has an unskilled work history.
5. Claimant is not currently engaged in substantial gainful activity (SGA).

6. In [REDACTED] claimant was hospitalized for a fracture of the left tibia and fibula.
7. Claimant used a walker shortly after the fracture.
8. In [REDACTED], claimant had severe impairments with gait on a level surface and was felt by treating sources to be unable to work.
9. In [REDACTED] [REDACTED], claimant had moderate difficulty with gait on a level surface and was felt by treating sources to be unable to work.
10. In [REDACTED], claimant had minimum difficulty with his gait on all surfaces and was felt by treating sources to have moderate difficulty with his ability to work.
11. On [REDACTED], claimant had minimum to no difficulty with his gait, and no difficulty with home performance; claimant was felt by his treating sources to have minimum to no difficulty in his ability to work.
12. At this evaluation, claimant was noted to be pain free and could ambulate with normal and accelerated speed without a limp.
13. Claimant was discharged from rehabilitation at this point, and was felt to have plateaued.
14. An independent evaluation in [REDACTED] noted residual minimal pain and slight puffiness in the area of the operative scars with a slightly decreased range of motion in that area.
15. Claimant has had no hospitalizations or complications since his initial admission.
16. On April 19, 2011, the Medical Review Team denied MA-P, stating that claimant's impairment did not meet durational requirements.
17. On July 21, 2011, claimant filed for hearing.
18. On August 30, 2011, the State Hearing Review Team (SHRT) denied MA-P, stating that claimant's impairment did not meet durational requirements.
19. On December 8, 2011, a hearing was held before the Administrative Law Judge.
20. Claimant submitted additional evidence at the hearing; this was resubmitted to SHRT.
21. On April 25, 2012, SHRT again denied MA-P, stating that claimant could perform 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).

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 the 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 (6<sup>th</sup> 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 fracture to the left tibia and fibula that prevents participation in work-related activities. However, claimant’s medical records show that claimant had no complications from the corrective surgery and was progressing as expected. There are no records that show claimant’s injuries are expected to last one year or more. Claimant has had no admissions since the emergency treatment in [REDACTED]. Claimant has no devices or other attachments that are permanent and affect work-related activity. Independent reports show that claimant had only minimal residual pain and only slight decreases in range of motion. A treating source report in [REDACTED] noted that claimant had minimal to no physical restrictions; this was two months before claimant would have met the 12-month durational requirement. Therefore, the undersigned holds that claimant’s condition did not last for the 12-month duration required by the regulations.

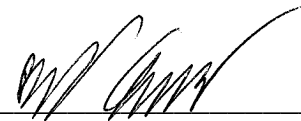
Claimant has not presented the required competent, material, and substantial evidence which would support a finding that claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c).

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 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.

### **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 program. Therefore, the decision to deny claimant's MA-P 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: July 9, 2012

Date Mailed: July 9, 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:

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- 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:

