

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-46665
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: December 19, 2011
DHS County: Wayne (82-31)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, MCL 400.37 and Claimant's request for a hearing. After due notice, a telephone hearing was held on December 19, 2011, from Detroit, Michigan. Claimant appeared and testified. Claimant was represented by [REDACTED]. The Department of Human Services (Department) was represented by [REDACTED].

ISSUE

Did the Department properly determine that Claimant is not disabled for purposes of the Medical Assistance (MA-P) program?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material and substantial evidence and on the whole record, finds as fact:

1. On March 9, 2011, Claimant filed an application for MA benefits. The application requested MA-P retroactive to December 1, 2010.
2. On July 14, 2011, the Department's Medical Review Team (MRT) found the Claimant not disabled.
3. The Department notified the Claimant of the MRT determination.
4. On July 28, 2011, the Department received Claimant's timely written request for an administrative hearing.
5. On September 14, 2011, the Department's State Hearing Review Team (SHRT) found Claimant not disabled.

6. Claimant, age forty-eight, has a sixth-grade education. He was a special education student.
7. Claimant is 5'11" and weighs 305 lbs.
8. Claimant last worked in 2009 as a maintenance technician cleaning an office building. Claimant has not performed any other relevant work.
9. Claimant currently suffers from mental retardation and learning disability
10. Claimant has severe limitations in verbal comprehension, perceptual reasoning, working memory, and processing speed. Claimant's limitations are lifelong impairments, lasting twelve months or more.

CONCLUSIONS OF LAW

MA was established by Title XIX of the U.S. Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department administers MA pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM) and Reference Tables (RFT).

SDA provides financial assistance for disabled persons and was established by 2004 PA 344. The Department administers SDA pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in BAM, BEM and RFT.

Federal regulations require the Department to use the same definition for "disabled" as the U.S. Social Security Administration uses for Supplemental Security Income (SSI) under Title XVI of the U.S. Social Security Act. 42 CFR 435.540(a).

"Disability" is:...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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a five-step sequential evaluation process by which current work activity, the severity of the impairment(s), the types of current physical and mental impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled is made at any step in the sequential evaluation, no evaluation under a subsequent step is necessary.

Turning now to the required five-step evaluation, Step 1 requires the trier of fact to determine if the individual is working and if the work is substantial gainful activity. 20

CFR 416.920(b). In this case, Claimant is not working. Therefore, Claimant is not disqualified for MA at Step 1 in the sequential evaluation process.

Step 2 requires that in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. 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 Step 2 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 screen out at this level only those claims which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimis* hurdle" in the disability determination. The *de minimis* standard is a provision of law that allows the court to disregard trifling matters.

In this case, Claimant has presented the required medical data and evidence necessary to support a finding that he has significant mental limitations in his ability to perform basic work activities such as unskilled work. Medical evidence has clearly established that Claimant has an impairment that has more than a minimal effect on Claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63. It is found and determined that Step 2 has been met, and Claimant is not disqualified from benefits at Step 2. Claimant's application must now be submitted to the requirements of Step 3 of the sequential process.

In Step 3 of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Administrative Law Judge finds that the record supports a finding that Claimant's impairment is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A.

The evidentiary facts upon which this conclusion is based are that Claimant's relevant work history consists exclusively of unskilled work activity; Claimant has a history of special education and mental retardation; Claimant cannot read, write or perform basic math skills; Claimant's verbal comprehension on the Wechsler Adult Intelligence Scale is 51; and, Claimant's full scale IQ on the Wechsler Adult Intelligence Scale is 43.

Claimant's impairment appears in Section 12.05, Mental Retardation, of the above-cited Appendix. This paragraph states that a person with a valid verbal, performance or full scale IQ of 59 or less meets the Federal definition of a mentally retarded person. On [REDACTED] [REDACTED] gave Claimant the Wechsler Adult Intelligence Test and determined that Claimant had a verbal comprehension score of 51 and a full scale IQ score of 43, both of which are below the 59-point standard in Section 12.05B of the Listing of Impairments. Accordingly, Claimant is found to be disabled based upon the medical evidence alone. 20 CFR 416.920(d). The Step 3 analysis results in a finding of disability at this Step.

As the Claimant is found disabled at Step 3, it is not necessary to continue through Steps 4 and 5.

Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program. The Department's denial of MA benefits to Claimant is REVERSED.

Considering next whether Claimant is disabled for purposes of SDA, the person has to have a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of MA benefits based upon disability or blindness (or receipt of SSI or RSDI benefits based upon disability or blindness) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and nonfinancial eligibility criteria are found in BEM Item 261. Inasmuch as Claimant has been found disabled for purposes of MA, he must also be found disabled for purposes of SDA benefits. Claimant may apply for these benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides and concludes that Claimant meets the definition of medically disabled under the Medical Assistance program as of March 9, 2011. The Department is REVERSED.

Accordingly, the Department is ordered to:

1. Initiate a review of the Claimant's March 9, 2011, MA and MA-retroactive application, if it has not already done so, to determine if all nonmedical eligibility criteria have been met;
2. Initiate procedures to inform Claimant and his Authorized Representative of its determination in writing.
3. Assuming that Claimant is otherwise eligible for program benefits, the Department shall initiate procedures to review Claimant's continued medical eligibility for program benefits in February 2013.

4. All steps shall be taken in accordance with Department policy and procedure.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: December 20, 2011

Date Mailed: December 20, 2011

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

JL/pf

cc:

