

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-51950
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: January 3, 2012

ADMINISTRATIVE LAW JUDGE: Susan C. Burke

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on January 3, 2012. The Claimant appeared and testified and was represented by Attorney [REDACTED]. [REDACTED] appeared on behalf of the Department of Human Services ("Department").

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefit programs.

FINDINGS OF FACT

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

1. Claimant submitted an application for public assistance seeking MA-P, retro MA-P and SDA benefits on June 22, 2011.
2. On August 29, 2011, the Medical Review Team (MRT) determined that Claimant was not disabled.
3. The Department notified Claimant of the MRT determination on September 1, 2011.

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4. On September 8, 2011, the Department received Claimant's timely written request for hearing.
5. On October 27, 2011, the State Hearing Review Team found Claimant not disabled.
6. At the time of the hearing, the Claimant was [REDACTED] years old with a birth date of [REDACTED].
7. Claimant has an eleventh grade education.
8. Claimant is not currently working.
9. Claimant had a balance problem, carpal tunnel syndrome, diarrhea, a history of hemorrhoids, back pain, cataracts, glaucoma, hepatitis C, HIV, weight loss and hypertension.
10. Claimant has a history of alcohol abuse.
11. Claimant's impairments have lasted, or are expected to last, continuously for a period of twelve months or longer.
12. Claimant's complaints and allegations concerning his impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

CONCLUSIONS OF LAW

The Medical Assistance program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services, formerly known as the Family Independence Agency, 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 Tables ("RFT").

Federal regulations require that the Department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the 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 sequential evaluation process by which current work activity, the severity of the impairment(s), statutory listings of medical 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 can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. (SGA) 20 CFR 416.920(b).

In this case, Claimant is not currently working. Claimant testified credibly that he is not currently working and the Department presented no contradictory evidence. Therefore, Claimant may not be disqualified for MA at this step in the sequential evaluation process.

Second, 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 expected to last twelve 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. The *Higgs* court used the severity requirement as a “*de minimus* hurdle” in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

In this case, medical evidence has clearly established that Claimant has an impairment (or combination of impairments) that has more than a minimal effect on Claimant's work activities. The medical reports showed Claimant to have a balance problem, carpal tunnel syndrome, diarrhea, a history of hemorrhoids, back pain, cataracts, glaucoma, hepatitis C, HIV, weight loss and hypertension.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, meets or medically equals the criteria of an impairment listed in Appendix 1 of Subpart P of 20 CFR, Part 404. (20 CFR 416.920 (d), 416.925, and 416.926.) This Administrative Law Judge finds that the Claimant's medical record supports a finding that Claimant's impairment(s) is a “listed impairment” or is medically equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A.

In the present case, Claimant has alleged disability due to a balance problem, carpal tunnel syndrome, diarrhea, a history of hemorrhoids, back pain, cataracts, glaucoma, hepatitis C, HIV, weight loss and hypertension.

This Administrative Law Judge consulted 14.00, Immune System Disorders.

14.08 details an impairment listing of human immunodeficiency virus (HIV) infection and HIV wasting syndrome (14.08 H), characterized by involuntary weight loss of 10 percent or more of baseline (computed based on pounds, kilograms, or body mass index (BMI)) or other significant involuntary weight loss as described in 14.00F5 (loss of less than 10 percent may or may not be significant, depending on the individual's baseline weight and body habitus) and in the absence of a concurrent illness that could explain the findings, along with chronic diarrhea lasting for one month or longer.

Claimant has HIV infection, as found by laboratory tests (p. 189 of evidence). Claimant is [REDACTED] on January 19, 2011, as noted by the [REDACTED] G [REDACTED] and Claimant weighed [REDACTED] pounds on July 27, 2011 as noted by [REDACTED] M.D. Claimant stated credibly that he cannot put on weight. Claimant was shown to have chronic diarrhea lasting for one month or longer. Claimant was diagnosed with

diarrhea by [REDACTED] on [REDACTED]. Claimant testified credibly at the hearing that he suffered from diarrhea at the time of the hearing and that he had suffered in January of 2011 when he was studying for the GED. Claimant recalled suffering from diarrhea and the teacher telling him he was going to the bathroom too often.

In light of the foregoing, it is found that the Claimant's impairment meets, or is the medical equivalent thereof, of a listed impairment within 14.00, specifically 14.08H1.

Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code Rule 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, the Claimant is found disabled for purposes of the MA-P program; therefore, he is found disabled for purposes of SDA benefit program.

DECISION AND ORDER

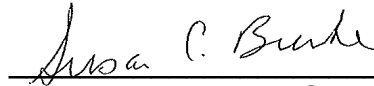
The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant disabled for purposes of the MA-P and SDA benefit programs.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate processing of the June 22, 2011 application to determine if all other non-medical criteria are met and inform Claimant of the determination in accordance with Department policy.
3. The Department shall, in light of Claimant's history of alcohol abuse, evaluate the need for a protective payee in accordance with Department policy.
4. The Department shall supplement for any lost benefits (if any) that Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.

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5. The Department shall review Claimant's continued eligibility in one year from the date of this decision in accordance with Department policy.



Susan C. Burke
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: 1/18/12

Date Mailed: 1/18/12

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.

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.

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Request must be submitted through the local DHS office or directly to MAHS by mail at

Michigan Administrative hearings
Re consideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

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cc:

