

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 20117828

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 13, 2011

Macomb 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 April 13, 2011.

ISSUE

Was the denial of claimant's application for 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 and retroactive MA-P on August 25, 2010.
- (2) Claimant is 30 years old.
- (3) Claimant is not currently working.

- (4) Claimant has a congenital heart defect known as Ebstein's Anomaly, a congenital displacement of the tricuspid valve towards the apex of the right ventricle.
- (5) This defect presents in the claimant as an AV nodal reentrant tachycardia with associated pre-excitation.
- (6) Over the past year, claimant has had several episodes of tachycardia; claimant's ICD device has fired in each of these episodes several times to the point of exhaustion.
- (7) Claimant has required extended hospital visits for each of these episodes.
- (8) At one point in October 2010, it was estimated that claimant had been in atrial tachycardia/atrial fibrillation 100% of the time for 18 consecutive days.
- (9) Claimant has severe right ventricular systolic dysfunction.
- (10) An ECG dated March 9, 2009, showed claimant with a right ventricular EF of 12%.
- (11) Claimant has not had any episodes of syncope associated with this impairment, but has had one episode of near-syncope.
- (12) Claimant is being considered for heart transplantation.
- (13) Claimant's treating source has stated that claimant cannot lift any weight, is restricted from standing and walking, and needs assistance in the home with household chores.

- (14) On September 2, 2010, the Medical Review Team denied MA-P and retroactive MA-P, stating that claimant was capable of performing other work.
- (15) On November 16, 2010, claimant filed for hearing.
- (16) On December 12, 2010, the State Hearing Review Team denied MA-P, and retroactive MA-P, stating that the current evidence was insufficient.
- (17) On April 13, 2011, a hearing was held before the Administrative Law Judge.
- (18) Claimant was represented by [REDACTED].

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.

In the current case, claimant has presented more than sufficient evidence of a heart condition that has more than a minimal effect on the claimant's ability to do basic work activities. Claimant has functional limitations resulting from his heart condition.

Claimant's treating source has limited claimant from most forms of physical activity. Claimant testified that most forms of physical exertion will send his heart into atrial tachycardia. Claimant has a long history of a congenital heart defect known as Ebstein's Anomaly, a congenital displacement of the tricuspid valve towards the apex of the right ventricle. At one point in October 2010, claimant had been estimated to be in atrial tachycardia/fibrillation for over 18 consecutive days. Physical activity of any sort places claimant at risk for tachycardia, and the resultant ICD firing spree. These symptoms limit claimant's aptitude for any job related physical activity. Furthermore, medical evidence shows that claimant began experiencing more serious bouts in 2009, and therefore, meets the duration requirements of step two. Claimant thus easily passes step two of our evaluation.

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. The great weight of the evidence of record finds that claimant's heart condition equal the listings for cardiovascular impairments contained in section 4.00 (Cardiovascular System).

Appendix 1 of Subpart P of 20 CFR 404, Section 4.00 has this to say about chronic heart failure:

4.05 Recurrent arrhythmias, not related to reversible causes, such as electrolyte abnormalities or digitalis glycoside or antiarrhythmic drug toxicity, resulting in uncontrolled (see 4.00A3f), recurrent (see 4.00A3c) episodes of cardiac syncope or near syncope (see 4.00F3b), despite prescribed treatment (see 4.00B3 if there is no prescribed treatment), and documented by resting or ambulatory (Holter) electrocardiography, or by other appropriate medically acceptable testing, coincident with the occurrence of syncope or near syncope (see 4.00F3c).

In order to meet this listing, claimant should have uncontrolled, recurrent episodes of cardiac syncope or near syncope. Records show that claimant has only one episode of near syncope, which occurred in early October 2010.

This single episode is not enough to meet the listings of 4.05. However, claimant's ability to remain conscious during his frequent episodes does not mean that claimant fails to meet the listing. The Administrative Law Judge, after consideration, believes that claimant equals the listing in question.

A claimant can be considered to equal the listing in question if claimant's impairment has other findings related to their impairment that are at least of equal medical significance to the required criteria. 20 CFR 416.925. Claimant's recurrent arrhythmia has resulted in several hospitalizations over the past year. Each bout is usually marked by claimant's ICD firing repeatedly; doctors remarked during one such incident that claimant's ICD may have exhausted itself. During these firing attacks, claimant is incapacitated, and has required multi-day admissions. In October, 2010, doctors noticed that claimant had been in tachycardia/fibrillation for 18 straight days. Given the nature and severity of these attacks, the fact that claimant is incapacitated

when having these attacks, the number of the attacks, and the requirement of hospitalization with these attacks, the undersigned holds that the attacks and the resulting symptoms of the attacks are at least equal, or more severe, than the requirement for syncope in listing 4.05.

Medical records show that claimant has uncontrolled, recurrent episodes of tachycardia/fibrillation, which are medically equal to episodes of syncope. Therefore, the undersigned holds that claimant equals the listing of 4.05.

As claimant meets both the criteria for listing 4.05, the Administrative Law Judge holds that claimant meets or equals the listings contained in section 4.00, 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.

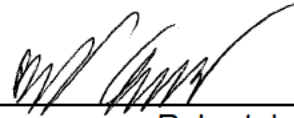
DECISION AND ORDER

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 decision to deny claimant's application for MA-P was incorrect.

Accordingly, the Department's decision in the above stated matter is, hereby, REVERSED.

The Department is ORDERED to process claimant's MA-P 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:

