

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 20118430

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 4, 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 4, 2011.

ISSUE

Was the denial of claimant's application for MA-P and retroactive 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 June 25, 2010.
- (2) Claimant is 34 years old.
- (3) Claimant has a high school education.
- (4) Claimant is not currently working.
- (5) Claimant has a work history consisting of waitressing jobs.

- (6) Claimant has a documented history of systemic lupus.
- (7) Claimant's impairment has affected two or more of her organs/body systems, including her pancreas and liver.
- (8) Claimant has had constitutional symptoms of lupus, including fatigue, weight loss, malaise, and the occasional fever.
- (9) On August 16, 2010, the Medical Review Team denied MA-P and SDA, stating that claimant was not eligible for MA because she was capable of doing other work under rule 201.11.
- (10) On November 16, 2010, claimant filed for hearing.
- (11) On January 11, 2011, the State Hearing Review Team denied MA-P, Retro MA-P, stating that claimant was capable of other work.
- (12) On April 4, 2011, a hearing was held before the Administrative Law Judge.
- (13) 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 \$1000.

In the current case, claimant has testified that she 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. 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 presented more than sufficient evidence of systemic lupus and uncontrolled diabetes mellitus that has more than a minimal effect on the claimant's ability to do basic work activities. Claimant's medical records show a history of lupus with significant effects on claimant's constitution, with multiple hospital admissions, generalized weakness and pain, and effects of moderate severity on several of claimant's organs/body systems. Claimant's diabetes is uncontrolled, creating multiple hospital admissions due to the side effects of the impairment, and creating limitations on claimant's physical abilities.

These limitations are both severe and create significant impairments in claimant's physical well being, meet the durational requirements, and impair claimant's ability to perform work-related activities. Thus, claimant easily passes Step 2 of our evaluation.

In the third step of the sequential evaluation, we must determine if the claimant's impairment is 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.

Appendix 1 of Subpart P of 20 CFR 404, Section 14.00 has this to say about systemic lupus:

14.02 Systemic lupus erythematosus. As described in 14.00D1. With:

- A.** Involvement of two or more organs/body systems, with:
1. One of the organs/body systems involved to at least a moderate level of severity; and
 2. At least two of the constitutional symptoms or signs (severe fatigue, fever, malaise, or involuntary weight loss).

Claimant has a documented diagnosis of systemic lupus as shown through the evidence of record. This impairment appears to be affecting several of her organs and body systems, including her liver and pancreas. Claimant has had several bouts of pancreatitis resulting in many distinct hospitalizations, which, in the undersigned's opinion, is enough to be considered a moderate level of severity. Finally, claimant has testified credibly that she has several of the constitutional symptoms of lupus.

Claimant has had weight fluctuations of at least 20 pounds, including a loss of 20 pounds in the last three months. Claimant is affected by a severe fatigue at least 5 days of a typical week, often leaving her unable to get out of bed. This fatigue is accompanied by a malaise that brings generalized pain to joints and other areas of the body. Claimant is often unable to sleep, though she remains exhausted. Claimant has been affected by fevers in the past. Therefore, the undersigned feels that claimant's impairments are enough to meet or equal the listings of 14.02A, even without considering claimant's frequent hospital admissions due to diabetic acidosis. As claimant meets or equals the listings for systemic lupus, claimant satisfies the listings requirement of step 3, and a finding of disability is directed.

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.

A word must be said with regard to SHRT's allegations of drug seeking behavior. While claimant's medical records to indicate that claimant has engaged in such behavior in the past, at no point in the records is there an indication that claimant's behavior is the cause of claimant's impairment. In fact, the medical evidence shows that the opposite appears to be true—claimant's impairments have left claimant in such pain that claimant seeks increasing amounts of legal pain medication in order to alleviate this pain.

Furthermore, at no point do the records call into question the materiality of claimant's behavior, and thus, this behavior has no place in a disability analysis.

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-P program. Therefore, the decisions to deny claimant's application for MA-P were 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 Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 05/03/11

Date Mailed: 05/05/11

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:

