

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-19708
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: May 12, 2011
County: Wayne (82-82)

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 May 12, 2011, by teleconference in Detroit, Michigan. Participants on behalf of claimant included [REDACTED] and Claimant's witness, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [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 January 18, 2011.
2. Claimant is 24 years old.
3. Claimant has a 12th grade education with some college.
4. Claimant has an unskilled work history.
5. Claimant is not currently engaged in substantial gainful activities (SGA).
6. In [REDACTED], claimant was hospitalized after a gunshot wound to the left leg.

7. Claimant had surgery for a femur fracture secondary to the wound.
8. Claimant could only ambulate through the use of crutches for several months.
9. Claimant was non-weight bearing on the leg until [REDACTED]
10. On [REDACTED], claimant's doctors noted that he could proceed to full weight bearing on the leg.
11. On [REDACTED], it was noted that claimant was walking consistently with a cane, and had no pain.
12. Treating sources noted that claimant's injury was healing well, and claimant had experienced no setbacks.
13. There were no indications that claimant's fracture had set incorrectly.
14. Claimant testified that he had been told by treating sources that the fracture would take a year to heal.
15. Treating sources do not indicate that claimant would be restricted from work-related activities for 12 months.
16. Claimant has had no hospitalizations or complications since his initial admission.
17. On January 27, 2011, the Medical Review Team denied MA-P, stating that claimant's impairment did not meet durational requirements.
18. On February 10, 2011, claimant filed for hearing.
19. On March 8, 2011, the State Hearing Review Team (SHRT) denied MA-P, stating that claimant's impairment did not meet durational requirements.
20. On May 12, 2011, a hearing was held before the Administrative Law Judge.
21. Claimant submitted additional evidence at the hearing; this was resubmitted to SHRT.
22. On April 4, 2012, SHRT again denied MA-P, stating that claimant's impairments did not meet durational requirements.

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 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 (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 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 a left leg fracture secondary to a gunshot wound that prevents participation in work-related activities. Claimant was on crutches for five months, and was non-weight bearing on the leg for the same period of time. However, claimant’s medical records show that claimant had no complications from 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 or treatment since the surgery to repair the fracture in [REDACTED]. Claimant has no devices or other attachments that are permanent and affect work-related activity. Claimant’s medical records show continual improvement, and show that claimant was removed from the crutches and ambulating with a cane shortly after the hearing. Claimant has no pain in the leg and has moved to full weight-bearing on the leg. While claimant testified that he was expected to take one year to heal, there was no indication in the medical records that claimant would be restricted from work-related activities for a year. Therefore, the undersigned holds that claimant’s condition does not appear likely to last for the 12-month duration required by the regulations.

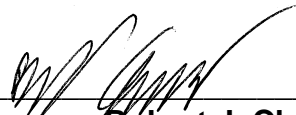
Claimant has not presented the required competent, material, and substantial evidence which would support a finding that he has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c).

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: June 7, 2012

Date Mailed: June 11, 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:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

2011-19708/RJC

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:

