

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201119784

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 16, 2011

Wayne 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 May 16, 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 December 17, 2010.
- (2) Claimant is 34 years old.
- (3) Claimant is not currently working.

- (4) On [REDACTED], hospital admission records noted that claimant has been admitted to the hospital multiple times for diabetic complications, including diabetic acidosis.
- (5) On [REDACTED], claimant was discharged from the [REDACTED] [REDACTED] with a diagnosis of diabetic acidosis.
- (6) Despite this diagnosis, and despite indications that claimant had had more admissions for acidosis, neither MRT nor SHRT ever investigated claimant's acidosis medical history.
- (7) Claimant testified at hearing that she had episodes of acidosis on average of once every 2 months, which had been diagnosed through appropriate blood tests at the time of her hospitalizations.
- (8) Claimant testified that she still had acidosis issues, was medically compliant, and had acidosis within the past two months.
- (9) On January 12, 2011, the Medical Review Team denied MA-P and retroactive MA-P.
- (10) On February 10, 2011, claimant filed for hearing.
- (11) On March 4, 2011, the State Hearing Review Team denied MA-P, stating that claimant was capable of performing other work, citing rule 203.28.
- (12) On May 16, 2011, a hearing was held before the Administrative Law Judge.

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 they are 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 medical evidence of uncontrolled diabetes mellitus that has severely affected her health. Claimant has frequent episodes of diabetic acidosis that require hospitalizations, fatigue that interferes with work related activities, and pain. Claimant’s medical records show that claimant has had this condition for several years. The Administrative Law Judge finds that this is a significant impairment to claimant’s performance of basic physical work activities, and is therefore enough to pass step two of the sequential evaluation process.

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.

After considering the listings contained in Section 9.00 (Endocrine), 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 9.08 has this to say about mental disorders:

9.08 *Diabetes mellitus*. With:

- A. *Neuropathy* demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C); or
- B. *Acidosis* occurring at least on the average of once every 2 months documented by appropriate blood chemical tests (pH or pCO₂ or bicarbonate levels); or
- C. *Retinitis proliferans*; evaluate the visual impairment under the criteria in 2.02, 2.03, or 2.04.

While the Endocrine listings were changed on [REDACTED], the undersigned will use the regulations that were in effect at the time of the hearing.

In order to meet or equal the listings for this impairment, a claimant must either meet or equal the recommended listings contained in the A, B or C criteria. The record shows that the claimant meets the B criteria.

Records submitted at application make reference to the fact that claimant has had multiple hospitalizations for diabetic acidosis. These examinations note that claimant has been hospitalized for acidosis multiple times. The only medical records secured, from [REDACTED], note that claimant had a diagnosis of diabetic acidosis. Despite this fact, the undersigned notes that neither MRT nor SHRT ever conducted further investigation into claimant's medical history, despite claimant noting on her application and medical questionnaire that she was being treated for severe

uncontrolled diabetes. BAM 815 notes that MRT is to request additional medical evidence if that evidence is needed to make a determination of disability. Given claimant's testimony and independent examination notes, it should have been obvious that more evidence was necessary; however, MRT and SHRT failed to request that evidence. As this evidence should have been requested, and the reason it is not in the file is because of a failure of MRT to request that information, the undersigned will proceed as if the evidence in question would support the claimant's testimony.

Claimant testified that she has had several episodes of acidosis, occurring on average, once every 2 months. The undersigned finds this testimony credible, in light of medical records and the discharge diagnosis of [REDACTED], and will assume that the evidence not secured by MRT would support claimant's testimony. Claimant further testified that she is medically compliant, and there is no definitive evidence in the record that claimant is not. Therefore, the undersigned holds that claimant meets the B criteria of listing 9.08.

As claimant meets the B criteria, the Administrative Law Judge holds that claimant meets or equals the listings contained in section 9.00, 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 June, 2012.



Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 06/29/11

Date Mailed: 06/30/11

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:

