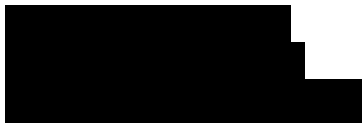


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201122180
Issue No: 2009
Case No: [REDACTED]
Hearing Date:
June 2, 2011
Bay 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 June 2, 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 on September 29, 2010.
- (2) Claimant alleges disability due to a compression fracture at the C7 level with a fusion of the lower cervical spine.
- (3) On November 1, 2010, the Medical Review Team denied MA-P stating that claimant's impairment was not likely to meet durational requirements.
- (4) On January 21, 2011, claimant filed for hearing.

- (5) On March 29, 2011, the State Hearing Review Team denied MA-P, stating that claimant was capable of performing light work, citing vocational rule 202.20.
- (6) On June 2, 2011, a hearing was held before the Administrative Law Judge at the Bay County Department of Human Services office.
- (7) Claimant did not appear at the hearing.
- (8) Claimant's representative did appear at the hearing.
- (9) Claimant was represented by [REDACTED]
- (10) New medical evidence was submitted at the hearing.
- (11) This evidence was submitted to the State Hearing Review Team on June 8, 2011.
- (12) SHRT denied MA-P once more, stating that claimant was unlikely to meet the 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 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 2011 is \$1,640. For non-blind individuals, the monthly SGA amount for 2011 is \$1000.

In the current case, claimant did not appear at the hearing to testify that he is not working, and although the Department has presented no evidence or allegations that claimant is engaging in SGA, the burden of proof falls solely on the claimant. Therefore, because there is no evidence, the Administrative Law Judge cannot determine whether the claimant is engaging in SGA, and thus fails the first step of the sequential evaluation process and cannot be found disabled.

While it is true that the substantial weight of the medical evidence could direct a finding of disabled, the Administrative Law Judge can only proceed to the medical evidence if the claimant can show, through a preponderance of the evidence, that he is not engaged in SGA. Claimant has failed to do so in the present case. Therefore, as claimant has failed to show that he is not engaged in SGA, the undersigned has no choice than to rule that he has failed to meet his burden of proof, and ultimately fails step one of the five step process. As claimant has not passed step one of the five step process, a finding of not disabled is directed. 20 CFR 416.920(b).


Furthermore, as a finding of no disability is directed at this step, further analysis is not required. 20 CFR 416.920.

Accordingly, 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 the 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: 07/11/11

Date Mailed: 07/12/11

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:

