

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-40713
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: October 26, 2011
County: Wayne (82-31)

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 telephone hearing was held on October 26, 2011, from Detroit, Michigan. Participants on behalf of claimant included [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), State Disability Assistance (SDA) 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 and SDA on October 6, 2010.
2. Claimant is 53 years old.
3. Claimant has a 12th grade education.
4. Claimant is not currently working.
5. Claimant has left ankle and foot pain.
6. Claimant has been prescribed a cane.

7. On November 29, 2010, the Medical Review Team denied MA-P, SDA, and retroactive MA-P, stating that claimant was capable of other work.
8. On December 14, 2010, claimant was sent a notice of case action.
9. On January 5, 2011, claimant filed for hearing.
10. On August 3, 2011, the State Hearing Review Team (SHRT) denied MA-P, SDA, and retroactive MA-P, stating that claimant was capable of other work.
11. On October 26 2011, a hearing was held before the Administrative Law Judge.
12. New evidence was submitted; this evidence was resubmitted to the SHRT.
13. On March 29, 2012, the SHRT issued a new decision.
14. This decision noted twice, in two separate areas, that “the objective medical evidence in the file demonstrates the physical residual functional capacity to perform sedentary work.”
15. The decision stated that “MA-P is denied using Vocational Rule 201.12 as a guide.”
16. Vocational Rule 201.12 directs a finding of disabled.
17. Vocational Rule 201.12 is used for claimants between the ages of 50 and 54, with a 12th grade education, unskilled work history, and who retain the physical residual functional capacity to perform sedentary work.
18. Claimant is between the ages of 50 and 54, with a 12th grade education, unskilled work history, and, according to SHRT, retains the physical residual functional capacity to perform sedentary work.
19. SHRT also denied SDA under the rationale that “the information in the file is inadequate to ascertain whether the claimant is or would be disabled for 90 days.”
20. Claimant passed step 2 in the SHRT analysis, which requires a finding that claimant would be disabled for 12 months or more.

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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (Department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in BAM, BEM and 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, the undersigned holds that the competent material evidence shows that claimant is not engaging in SGA and, therefore, passes the first step.

The Administrative Law Judge adopts the March 29, 2012, SHRT decision entirely. However, this decision was factually incorrect, with a conclusion that leads the Administrative Law Judge to wonder whether the SHRT examiner in question made a mistake as to the applicable rules in question.

SHRT cited Vocational Rule 201.12 as a rule that directed a finding of not disabled. However, Rule 201.12 directs a finding of disabled. Furthermore, Rule 201.12 is the

rule typically used for a claimant with the age, education, and prior work history as the subject claimant.

SHRT specifically stated, twice, that claimant retained the physical residual functional capacity (RFC) to perform sedentary work. Sedentary work is the physical RFC level adjudicated by Rule 201.12.

Rule 201.12 specifically provides that a claimant be found disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 201.12

Therefore, SHRT denied MA-P, using an analysis and rule citation that **specifically directs a finding of disabled.**

Furthermore, SHRT used the exact same reasoning and findings that the undersigned would have used, but came to a completely opposite conclusion. The undersigned feels that the medical evidence restricts claimant to sedentary work, as did SHRT in their decision. The undersigned feels that claimant does not meet a medical listing, as did SHRT in their decision. The undersigned feels that the medical evidence shows that claimant has a severe impairment, as did SHRT in their decision. However, using completely identical reasoning, the Administrative Law Judge has come up with a completely opposite conclusion than SHRT, apparently by applying an incorrect understanding of a rule.

In the current case, said rule directs a finding of disabled. Both the Administrative Law Judge and SHRT felt that this rule would apply to claimant's situation. This rule directs a finding of disabled. Therefore, claimant is to be considered disabled, with an onset date of at least July 2010.

With regards to the SDA application, as claimant has been found medically disabled for the purposes of the MA-P program, claimant meets the disability requirements for the SDA program as well.

DECISION AND ORDER

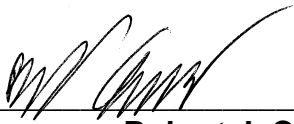
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant is disabled for the purposes of the MA and SDA programs as of July 2010. Therefore, the decision to deny claimant's application for MA-P and SDA was incorrect.

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

The Department is ORDERED to:

1. Process claimant's MA-P and SDA application of October 6, 2010, and award all benefits that claimant is entitled to receive under the appropriate regulations;

2. Conduct a review of this case in June 2013.



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.

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:

