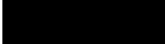


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**



IN THE MATTER OF:



Reg. No.: 2012-11880
Issue No.: 2009
Case No.: 
Hearing Date: March 5, 2012
County: Wayne (82-57)

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, an in-person hearing was held on March 5, 2012, at the Department of Human Services office in Wayne County Michigan, District 57. Claimant was represented at hearing by 
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ISSUE

Was the denial of claimant's application for Medical Assistance program (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 and retroactive MA-P on October 21, 2010.
2. Claimant is 52 years old.
3. Claimant has a limited education.
4. Claimant is not currently working.
5. Claimant has a relevant prior work history consisting of housekeeping.
6. This job was performed at the medium exertional level.

7. Claimant has a current medical history consisting of COPD and leg pain.
8. While claimant's medical records document gastroenteritis, there is no indication that claimant continues to have an impairment from this condition.
9. Claimant alleged no other impairments at application.
10. Claimant continues to smoke at least one pack per day, despite medical recommendations to quit.
11. Claimant alleges that her COPD results in fatigue, shortness of breath, and other lung-related conditions that prevent her from working.
12. Claimant did not specify any lifting restrictions, and restrictions on walking and standing were based upon her COPD.
13. Claimant alleged leg pain, but this pain was not documented in the medical record.
14. On November 16, 2010, the Medical Review Team denied MA-P, stating that claimant did not meet durational requirements.
15. On December 16, 2010, claimant was sent a notice of case action.
16. On February 4, 2011, claimant filed for hearing.
17. On December 21, 2011 the State Hearing Review Team denied MA-P, stating that claimant did not have a serious impairment.
18. On March 5, 2012, a hearing was held before the Administrative Law Judge.

CONCLUSIONS OF LAW

MA-P 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 MA-P 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 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 claimant is not engaging in SGA and, thus, passes the first step of the sequential evaluation process.

With regards to the actual disability evaluation, the Administrative Law Judge will assume, for the sake of argument, that claimant meets all statutory requirements to be found disabled.

In order to get benefits, a claimant must follow treatment prescribed by their physician if this treatment can restore the ability to work. If the claimant does not follow the prescribed treatment without a good reason, the claimant cannot be found disabled or blind. 20 CFR 416.930 (a) (b).

Disability could have been determined based upon claimant's COPD allegations; all other allegations, including leg pain and gastroenteritis are either completely unsupported by the medical record, or have been indicated through testimony and medical records to no longer be an impairment. All physical restrictions that claimant testified to arose from her allegations of COPD. Medical records indicate that claimant's condition was probably caused by claimant's failure to follow prescribed treatment, and there is evidence that claimant's condition would improve if claimant followed her prescribed treatment.

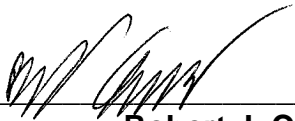
Claimant testified that she currently smokes at least one pack per day of cigarettes. Medical records with regards to the lungs note scarring and infiltrative change in the upper lobe. Claimant testified that she has been repeatedly warned by her doctors to cease smoking. While claimant's pulmonary insufficiencies may be due to other causes, there is nothing that states that claimant's problems are due to other causes. At the present time, it is impossible to separate what part of claimant's impairments are related to her refusal to cease smoking, and what parts are permanent impairments. Regardless, claimant has testified that she is not following prescribed treatment with regard to smoking and, therefore, per federal law, the Administrative Law Judge is prohibited from awarding benefits.

Therefore, even assuming that claimant meets statutory requirements for the disability program, claimant fails the disability process with regard to her refusal to follow prescribed treatment. When and if claimant decides to follow this treatment, she may reapply. Until that date, the Administrative Law Judge must hold that claimant does not meet the requirements for the disability-based Medicaid 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 MA-P. Therefore, the decision to deny claimant's application for MA-P 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: April 2, 2012

Date Mailed: April 2, 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:

