

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-13854
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: February 6, 2012
County: Oakland (63-03)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, MCL 400.37 and Claimant's request for a hearing. After due notice, a telephone hearing was held on February 6, 2012, from Detroit, MI. Claimant appeared and testified. The Department of Human Services (Department) was represented by [REDACTED].

ISSUE

Did the Department properly determine that Claimant is not disabled for purposes of the Medical Assistance (MA-P) and State Disability Assistance (SDA) programs?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On July 29, 2011, Claimant filed an application for MA and SDA benefits. The application requested MA-P retroactive to April 1, 2011.
2. On November 17, 2011, the Department denied Claimant's application for benefits based on a finding that Claimant did not meet the requisite disability criteria.
3. On November 28, 2011, Claimant filed a hearing request to protest the Department's determination.

4. Claimant, age sixty (██████████), has a ninth-grade education. He cannot read or write in English. His daughter completed the Department forms on his behalf.
5. Claimant last worked in 2009 as a stocker in a grocery store, loading produce onto the produce counter from heavy boxes. He did this also in 2000-2004. From 2004-2009, he worked as a store watchperson watching over staff and troubleshooting. Claimant's relevant work history consists of light, medium and heavy exertional work activities.
6. Claimant has a history of degenerative disc disease and low back pain, and vision and hearing problems, with an onset date of no later than ██████████. He was recently diagnosed with diabetes. Records indicate he had an x-ray showing a herniated disc.
7. Claimant has never been hospitalized for his impairments.
8. Claimant currently suffers from degenerative disc disease, hearing and vision problems, and diabetes. Claimant has severe limitations on his ability to perform work activities and the activities of daily living. Claimant's limitations have lasted or are expected to last twelve months or more.
9. Claimant's complaints and allegations concerning his physical impairments and limitations, when considered in light of all of the objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

CONCLUSIONS OF LAW

MA was established by Title XIX of the U.S. Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department administers MA 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 Reference Tables (RFT).

SDA provides financial assistance for disabled persons and was established by 2004 PA 344. The Department administers SDA pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in BAM, BEM and RFT.

Federal regulations require the Department to use the same definition for "disabled" as the U.S. Social Security Administration uses for Supplemental Security Income (SSI) benefits applications under Title XVI of the U.S. Social Security Act. 42 CFR 435.540(a).

"Disability" is...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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a five-step sequential evaluation process by which current work activity (Step 1), the severity of the impairment(s) (Steps 2 and 3), current physical and mental impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) (Steps 4 and 5) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, no evaluation under a subsequent step is necessary.

Turning now to the required five-step evaluation, Step 1 requires the trier of fact to determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, Claimant is not working at present. Therefore, Claimant is not disqualified for MA at Step 1 of the sequential evaluation process.

Step 2 requires that in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. 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 Step 2 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 screen out at this level only those claims which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimis* hurdle" in the disability determination. The *de minimis* standard is a provision of law that allows the court to disregard trifling matters.

In this case, Claimant has presented the required medical data and evidence necessary to support a finding that he has significant physical limitations in his ability to perform basic work activities such as standing, sitting, walking, lifting and carrying. Medical evidence clearly establishes that Claimant has an impairment (or combination of impairments) that has more than a minimal effect on Claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63.

As Claimant meets the severity requirement of Step 2, the trier of fact must next consider Step 3 of the sequential consideration of a disability claim. In Step 3 of the sequential consideration of a disability claim, the trier of fact must determine if the Claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404-Listing of Impairments. This Administrative Law Judge finds that Claimant's medical record and his testimony support a finding that Claimant's impairment(s) is a listed impairment or is equal to a listed impairment. *Id.* Accordingly, Claimant is found disabled based on the medical evidence alone. 20 CFR 416.920(d).

Based on the criteria of listing 1.04 *Disorders of the Spine*, the undersigned finds that Claimant's medical records and other evidence of record substantiate that the Claimant's medical impairment meets or is medically equivalent to the listed requirements. 20 CFR 404 §1.04 describes Disorders of the Spine as follows:

Disorders of the Spine (e.g. herniated nucleus, pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture) resulting in compromise of a nerve root (including the cauda equina) or the spinal cord, with:

- A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine); or
- B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours; or
- C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00(B)(2)(b).

20 CFR 404 Sec. 1.04.

In this case, Claimant has severe lower back pain associated with left and right lower extremity pain, weakness and numbness, secondary to lumbar disc disease with progressive deterioration. He reports he had an x-ray showing a herniated disc. Claimant gave credible and un rebutted testimony that a doctor has advised him not to work at a job requiring physical exertion such as bending, lifting and carrying heavy objects. The doctor recommended an easier job for Claimant, such as office work.

Claimant gave credible and un rebutted testimony that it is painful for him to stand more than 30-45 minutes, to sit more than ½ hour, to lift and carry more than 20 lbs., and to rotate his upper body. Claimant can walk 1-2 blocks only, drive for 10-15 minutes only, and when he turns while he is sleeping, he wakes up in pain. He cannot do yard work around the house for more than five minutes without pain.

Claimant gave credible and un rebutted testimony that he cannot engage in physical activity any longer. He used to play soccer in the 1990s, but he cannot play at present.

While there are no records of medical treatment, Claimant should not be denied benefits because he has not received treatment. This is taken into account by Federal regulation 20 CFR 404, Subpart P, Appendix 1, Section 1.00H, Documentation-When there is no record of ongoing treatment:

Some individuals will not have received ongoing treatment or have an ongoing relationship with the medical community despite the existence of a severe impairment(s). In such cases, evaluation will be made on the basis of the current objective medical evidence and other available evidence, taking into consideration the individual's medical history, symptoms, and medical source opinions. Even though an individual who does not receive treatment may not be able to show an impairment that meets the criteria of one of the musculoskeletal listings, the individual may have an impairment(s) equivalent in severity to one of the listed impairments or be disabled based on consideration of his or her residual functional capacity (RFC) and age, education and work experience. 20 CFR 404, Subpart P, Appendix 1, Sec. 1.00H.

Considering all of the above, the undersigned finds that Claimant's medical records substantiate that his impairments meet or are medically equivalent in severity to the Listing requirements of 1.04(A). In this case, this Administrative Law Judge finds that Claimant is presently disabled at Step 3 for purposes of the Medical Assistance (MA) program. As Claimant is disabled at Step 3, there is no need to evaluate Claimant with regard to Steps 4 and 5.

Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program. The Department's denial of MA benefits to Claimant is REVERSED.

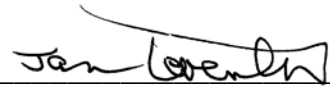
Considering next whether Claimant is disabled for purposes of SDA, an individual must have a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of MA benefits based upon disability or blindness (or receipt of SSI or RSDI benefits based upon disability or blindness) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM Item 261. Inasmuch as Claimant has been found disabled for purposes of MA, he must also be found disabled for purposes of SDA benefits. The Department's denial of SDA benefits to Claimant is REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides and concludes that Claimant meets the definition of medically disabled under the Medical Assistance and SDA programs.

The Department is ordered to:

1. Initiate a review of the Claimant's July 29, 2011, application, if it has not already done so, to determine if all other nonmedical eligibility criteria for MA, MA-retroactive and SDA benefits have been met.
2. Initiate procedures to inform Claimant of the Department's determination in writing, and provide MA-P, MA-P retroactive, and SDA benefits to Claimant at the benefit levels to which he is entitled.
3. Assuming that Claimant is eligible for program benefits, initiate procedures to review Claimant's continued eligibility for program benefits in March, 2013.
4. All steps shall be taken in accordance with Department policy and procedure.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 8, 2012

Date Mailed: February 8, 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.

2012-13854/JL

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

JL/pf

cc:

