

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

IN THE MATTER OF:



Reg. No.: 2012-21963
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: March 15, 2012
County: Oakland (63-03)

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 15, 2012, at the Department of Human Services (Department) office in Oakland County, Michigan, District 03. Claimant was represented at hearing by [REDACTED]. The Department was represented by [REDACTED].

ISSUE

Was the denial of claimant's application for Medical Assistance (MA-P) and State Disability Assistance (SDA) 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 May 3, 2011.
2. Claimant is currently employed, working 25 hours per week.
3. Claimant's monthly earnings for the month of February are \$1,148.39.
4. Claimant started working on December 18, 2011.
5. Claimant has a prior work history consisting of bartender.
6. Claimant has a medical history consisting of HIV infection, heart valve replacement, and depression.

7. Claimant was admitted to the hospital in [REDACTED] for endocarditis, due to opportunistic infection from his HIV+ status.
8. In [REDACTED] claimant underwent heart valve replacement as a result of the prior endocarditis.
9. In [REDACTED] claimant was increasing his activities and had improvement in breathing and activity tolerance.
10. In [REDACTED], claimant complained only of mild fatigue; claimant's viral load at that time was undetectable.
11. Claimant had normal motor strength.
12. Claimant alleged at the time of application that he could do all activities of daily living.
13. On September 9, 2011, the Medical Review Team denied MA-P and SDA, stating that claimant did not meet durational requirements.
14. On September 15, 2011, claimant was sent a notice of case action.
15. On December 8, 2011, claimant filed for hearing.
16. On February 10, 2012, the State Hearing Review Team (SHRT) denied MA-P and SDA, stating that claimant was capable of performing other work.
17. On March 15, 2012, a hearing was held before the Administrative Law Judge.
18. Additional evidence was submitted; on June 19, 2012, SHRT again denied MA-P and SDA, stating that claimant was capable of performing other work.

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 and for 2012 is \$1,690. For non-blind individuals, the monthly SGA amount for 2011 is \$1,000 and for 2012 is \$1,010.

In the current case, claimant testified that he is working. Claimant testified that he is working 25 hours per week and 8 hours per day. Claimant's monthly earnings for the month of February were \$1,148.39.

This is more than the threshold for SGA. The SGA threshold only allows for deductions for impairment-related work expenses, and claimant did not allege any impairment-related work expenses. Therefore, as claimant is performing SGA, a finding of not disabled is directed.

The Administrative Law Judge would note that this finding does not belittle the seriousness of claimant's disability. However, the rules for disability make no distinction as to how claimant got the job, the nature of the job or whether claimant is on light duty; the rules only examine whether claimant is exceeding the SGA threshold. This is a bright line rule; even if claimant were a penny above this limit, a finding of not disabled would be directed.

Furthermore, even if the Administrative Law Judge were to consider that claimant only started working in December 2011, the undersigned holds that he still would not pass the disability process.

The second step that must be considered is whether or not the claimant has a severe impairment. 20 CFR 416.920(c). 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.

The undersigned holds that, even if claimant passed step one, claimant’s disability does not meet the 12-month durational requirement of step 2. Claimant must have an impairment that will interfere with basic work activities for a period of 12 months. Claimant returned to work in [REDACTED] 11. By definition, claimant did not have an impairment that interfered with basic work activities for a period of 12 months.

While claimant is still HIV+, the test that must be used is whether this impairment interferes with basic work activities. As claimant is working, the undersigned holds that it does not. Furthermore, medical evidence in the file indicates that claimant does not even meet the *de minimus* standard and durational requirements.

In [REDACTED], claimant had a follow-up exam with regard to his heart valve replacement. Claimant alleged at the exam that the only residual effects he was feeling was mild fatigue. Claimant stated in his application that he could perform all activities of daily living. No current medical records indicate that claimant has any residual restrictions with regards to his work-related activities. While claimant testified to serious limitations, these limitations are not supported by the medical record and, in fact, contradict claimant’s own application statements. A treating source evaluation of [REDACTED] noted that claimant was stable and did not require assistance in the home.

This is not meant to minimize claimant's impairments at the time of his initial hospitalization; by all accounts, claimant was in dire shape at the time of his initial admittance. Unfortunately for claimant's case, the medical records do not support residual functional capacity restrictions beyond [REDACTED] and, therefore, claimant cannot be said to meet the durational requirements at step 2.

For those reasons, the Administrative Law Judge must conclude that the Department was not in error when it found claimant not disabled for the purposes of the MA-P program.

With regard to the SDA program, the Administrative Law Judge adopts similar reasoning. The disability requirements for the SDA program are identical to the MA-P program, except for a durational SDA requirement of 90 days. BEM 261. Claimant applied for SDA on May 3, 2011. By [REDACTED] claimant was only complaining of mild fatigue. Therefore, while claimant may have had a severe impairment in [REDACTED] the period under examination, starting May 3, 2011, does not meet the durational requirements for the SDA program, using the same reasoning as was used for the MA-P program.

Therefore, the Administrative Law Judge holds that the Department was not in error when if found claimant not disabled for the purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that decides that claimant is not disabled for the purposes of the MA and SDA programs. Therefore, the decision to deny claimant's MA-P and SDA 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: August 7, 2012

Date Mailed: August7, 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:

