

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-3335
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 9, 2012
County: Macomb (50-12)

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 February 9, 2012, at the Department of Human Services' (Department) office in Macomb County, Michigan, District 12. 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 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 on June 16, 2011.
2. Claimant is 55 years old.
3. Claimant has a 12th grade education with a certification as a medical assistant.
4. Claimant has a skilled work history.
5. Claimant is not currently engaged in substantial gainful activity (SGA).
6. Claimant applied for MA-P on the basis of "acute left hip fracture", "other pain", and "bone."

7. On [REDACTED], claimant was hospitalized due to a fracture of her left hip.
8. Claimant was the subject of a partial hip replacement, including the ball and upper part of her femur.
9. Claimant required a walker to ambulate at the time.
10. According to claimant's testimony, over the course of the next 11 months, claimant graduated to a cane before finally walking unassisted.
11. On [REDACTED], an independent physiatrist examination was conducted.
12. Claimant was found at that time to have no evidence of flattening of the cervical lordosis, normal range of motion of the spine, no tenderness, no muscle spasm, a normal straight leg raise, normal range of motion in the knees, ankles and feet, the ability to squat, the ability to heel walk, toe walk and tandem walk, and could sit and stand without assistance.
13. Claimant could ambulate at that time unassisted, though slowly.
14. Claimant was able to bend, stoop, carry, push, and pull.
15. Claimant alleged at hearing that she required her husband to assist her when walking, but was observed by the Administrative Law Judge after the hearing to walk unassisted once she left the building.
16. At the [REDACTED], examination, claimant stated that she continued to have pain in the left hip.
17. Claimant had a second examination on [REDACTED], as part of an internal medicine examination.
18. Claimant stated during that examination that she "did not have much pain anymore, only some discomfort".
19. This examination also noted a stable gait, with some difficulty walking on the left toe and heel.
20. The examination noted that the left hip only had minimal limitation of movement.
21. Claimant does not take any pain medications.
22. Claimant is not on any lifting restrictions.
23. Claimant is currently receiving no medical treatment.

24. Claimant has no medical records that support lifting restrictions.
25. Claimant has had no hospitalizations or complications since the initial admission.
26. On July 6, 2011, the Medical Review Team denied MA-P, stating that claimant's impairment did not meet durational requirements.
27. On July 14, 2011, claimant was sent a notice of case action.
28. On September 28, 2011, claimant filed for hearing.
29. On November 18, 2011, the State Hearing Review Team (SHRT) denied MA-P, stating that claimant's impairment did not meet durational requirements.
30. On February 9, 2012, a hearing was held before the Administrative Law Judge.
31. Claimant submitted additional evidence at the hearing; this was resubmitted to SHRT.
32. On May 18, 2012, SHRT again denied MA-P, stating that claimant's impairments did not meet 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 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 (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 testified that she is not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. Therefore, the undersigned holds that claimant is not performing SGA and passes step one of the five-step 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.

In the current case, claimant has not presented evidence of a severe impairment that has lasted or is expected to last the durational requirement of 12 months.

Claimant has alleged an impairment stemming from a hip fracture sustained on [REDACTED]. Claimant also alleged in her application "other pain" and "bone." The Administrative Law Judge assumes that the "other pain" is in reference to the pain from the hip fracture; the term "bone" is rather non-specific and does not describe an actual impairment; as such, it will not be considered. Therefore, claimant has only alleged disability with regard to the hip fracture and the resulting pain, and that will be the only impairment considered.

Claimant's medical records show that claimant had no complications from surgery and was progressing as expected. There are no records that show claimant's injuries are expected to last one year or more at the time of the injury. Claimant has had no admissions or treatment since the surgery to replace the broken hip in [REDACTED]. Claimant has no devices or other attachments that are permanent and affect work-related activity. While claimant was in physical therapy at one point, this therapy lasted two months and was not continued. Claimant is on no medications for her condition and is not currently receiving treatment for her condition.

Claimant testified that she was restricted from lifting over 10 pounds; however, there is no medical evidence to support this limitation, and the undersigned does not see a rational connection between a hip fracture and a restriction on lifting. Therefore, the undersigned finds claimant's testimony in this regard less than credible and gives it very little weight.

Claimant used a walker shortly after the fracture; she then progressed to a cane, and now walks unassisted. A physiatrist examination conducted on [REDACTED], two days before the one year durational requirement, noted that claimant had no evidence of flattening of the cervical lordosis, normal range of motion of the spine, no tenderness, no muscle spasm, a normal straight leg raise, normal range of motion in the knees, ankles and feet, the ability to squat, the ability to heel walk, toe walk and tandem walk, and could sit and stand without assistance. It was also noted that claimant could walk unassisted, albeit slowly.

Claimant testified that she required assistance to walk, mainly by using her husband's arm; however, this testimony was contradicted by two examinations that noted that claimant could walk unassisted, and also by the observations of the undersigned, who noted that claimant, while leaving the building, relied on her husband's arm, but upon exiting the building, released the arm and proceeded to walk without difficulty. The Administrative Law Judge, therefore, finds claimant's testimony in this regard to be less than credible and gives it no weight.

Claimant did not testify to any pain and told one examiner that she still had some pain, and another examiner that she did not have any pain, only some occasional discomfort. Claimant is on no medications for pain, and the examinations showed no tenderness or decreased range of motion; the Administrative Law Judge holds that the claimant does not experience any significant residual pain as a result of her impairment.

In fact, the only residual effects from claimant's impairments appear to be a tendency to walk slowly and minor balance issues when squatting. Claimant also apparently required assistance from her husband to get on the examination table. However, the undersigned does not believe that these conditions would prevent or impair any work-related activities. The available medical record shows that claimant is almost fully recovered from her ordeal, with the only lasting effects being those that do not particularly impair work-related activities. While claimant testified to lasting effects, the undersigned found claimant's testimony to be less than credible and cannot give her testimony any weight. Therefore, the undersigned holds that claimant's condition does not appear to have lasted for the 12-month duration required by the regulations.

Claimant has not presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c).

The medical record as a whole does not establish any impairment that would impact claimant's basic work activities for a period of 12 months. There are no current medical records in the case that establish that claimant continues to have a serious medical impairment. There is no objective medical evidence to substantiate the claimant's claim that the impairment or impairments are severe enough to reach the criteria and definition of disabled. Accordingly, after careful review of claimant's medical records, this Administrative Law Judge finds that claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

However, even if the Administrative Law Judge were to hold that claimant met durational requirements at step 2, claimant would still not be considered disabled. Proceeding through the 5-step process, claimant does not have a listings level disability at step 3 when considering listing 1.00, as claimant does not have the inability to ambulate effectively. Proceeding to step 4, claimant testified that she had been a medical assistant. The Administrative Law Judge would give claimant, based on the medical evidence, no limitations on her work-related abilities and would, therefore, find claimant capable of performing her past relevant work, which required light lifting, computer use, and the ability to bend, sit, and stand for at least 6 hours of an 8-hour day.

As claimant can perform her past relevant work, the Administrative Law Judge would disqualify claimant at step 4, and claimant would still be considered not disabled for the purposes of the MA-P 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 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: July 9, 2012

Date Mailed: July 9, 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.

2012-3335/RJC

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:

