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

IN THE MATTER OF:

[redacted]

Reg. No.: 2012-37119
Issue No.: 2009
Case No.: [redacted]
Hearing Date: May 31, 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 May 31, 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 February 22, 2011.

2. Claimant is 53 years old.

3. Claimant has a 12th grade education.

4. Claimant has a skilled work history consisting of mechanic.

5. This job was performed at the medium level.

6. Claimant is not currently engaged in SGA.

7. In [redacted], claimant was hospitalized for bilateral pneumonia and nodular lung disease, abscess in the neck, and hyponatremia. There were also indications of endocarditis.

8. Claimant was released from the hospital in stable condition and has not been admitted to the hospital since [redacted].

9. Claimant alleges shortness of breath and emphysema, with symptoms of dizziness and lightheadedness.

10. Claimant has had no pulmonary function testing since [redacted].

11. Medical records indicate that claimant smokes 5 cigars per day.

12. Claimant also alleged at hearing knee problems and nerve problems in his neck, but these impairments were neither listed anywhere in his application, nor were they mentioned in his medical records.

13. Claimant is able to perform all activities of daily living.

14. Claimant has had no hospitalizations or complications since his initial admission in [redacted].

15. On December 14, 2011, the Medical Review Team denied MA-P, stating that claimant's impairment did not meet durational requirements.

16. A notice of case action was sent to claimant on December 14, 2011.

17. On February 20, 2012, claimant filed for hearing.

18. On April 20, 2012, the State Hearing Review Team (SHRT) denied MA-P, stating that claimant's impairment did not meet durational requirements.

19. On May 31, 2012, a hearing was held before the Administrative Law Judge.

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 he 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 emphysema. However, the only medical records in the packet arise from a hospital admission in [redacted] for bilateral pneumonia and nodular lung disease. Claimant was released in stable condition. There was no mention of emphysema. There was mention that claimant was smoking 5 cigars per day at that time, which is not consistent with emphysema. There are no records that show claimant's injuries are expected to last one year or more. Claimant has had no admissions since the emergency treatment in [redacted] Claimant has no devices or other attachments that are permanent and affect work-related activity.

Additionally, there are no records that indicate claimant still has lung issues as a result of the [redacted] hospital admission. The hospital records do not opine that claimant's condition was expected to last 12 months or more. Claimant can perform all activities of daily living and, while claimant expressed limitations in sitting and standing, these limitations are not supported by the medical record. Claimant's lung problems in the medical record would not have a rational connection to limitations in standing and sitting.

Furthermore, while claimant alleged knee and neck pain problems, these impairments were not mentioned in the initial application or in the medical records. Therefore, the Administrative Law Judge cannot consider these issues.

Claimant has not presented the required competent, material, and substantial evidence which would support a finding that claimant has an impairment or combination of

impairments which would significantly limit his 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 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 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 Department's 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 31, 2012

Date Mailed: July 31, 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: [redacted]