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

IN THE MATTER OF:

Reg. No.:	2012-48176
Issue No.:	2009
Case No.:	
Hearing Date:	July 16, 2012
County:	Wayne (82-31)

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 July 16, 2012, by teleconference in Detroit, Michigan. Participants on behalf of claimant included . Participants on behalf of the Department of Human Services (Department) included

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 September 8, 2011.

2. Claimant is 51 years old.

3. Claimant has a 12th grade education.

4. Claimant has a work history consisting of security guard, mail handling, and fast food manager.

5. These jobs were performed at the light exertional levels.

6. Claimant is not currently engaged in substantial gainful activities (SGA).

7. Claimant alleges disability due to bipolar disorder, diabetes, and a bone spur on the right foot.

8. Claimant has provided no medical evidence of diabetes, one radiology report showing mild spurring of the right foot, and one two-page psychological exam with a DHS-49E showing no limitations in most categories, and mild limitations in a few others.

9. Claimant alleges symptoms of pain, falling, numbness, inability to stand and walk for long periods, frequent anxiety attacks, severe depression, and sleep disturbance.

10. There is little to no medical evidence supporting these symptoms.

11. Claimant alleges functional limitations, but has provided little to no medical evidence to support said functional limitations.

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

13. Claimant has had no hospitalizations or complications.

14. Claimant has a history of noncompliance with medications.

15. On April 5, 2012, the Medical Review Team denied MA-P, stating that claimant could perform other work.

16. A notice of case action was sent to claimant on April 12, 2012.

17. On April 19, 2012, claimant filed for hearing.

18. On June 14, 2012, the State Hearing Review Team (SHRT) denied MA-P, stating that claimant could perform other work.

19. On July 16, 2012, a hearing was held before the Administrative Law Judge.

20. Additional evidence was submitted; on September 5, 2012, SHRT again denied MA-P stating that claimant could perform 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).

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

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 bone spurs, diabetes, and bipolar disorder. However, claimant has presented little to no medical evidence and, thus, the Administrative Law Judge must hold that claimant has failed to meet his burden of proof in showing a severe impairment.

The totality of the medical evidence in the file is a radiology report showing a mild bone spur, a DHS-49E that shows only moderate limitations in a few categories, and a two-page psychological report from [redacted]. While claimant alleged functional limitations, without adequate medical evidence, the undersigned cannot find these limitations supportable. Furthermore, claimant testified that he was able to perform all or most activities of daily living, and has not had any hospitalizations or complications in recent medical history.

Furthermore, claimant has a long history of noncompliance with treatment and medications; the solitary medical report notes that when claimant is compliant with his medications, he is able to "function better." The medical records do not show that claimant has symptoms when compliant with his medications. Claimant has not shown or demonstrated difficulty in obtaining treatment. Therefore, as the limited record shows that claimant's symptoms are largely alleviated when treatment compliant, and as claimant has not been treatment compliant, with no good cause for doing so, the Administrative Law Judge is hesitant to use the brief symptoms mentioned by his

treating psychological source as a basis showing that claimant meets the requirements of step two.

While claimant did provide a DHS-49E that contains a source statement of moderate limitations in some areas of functioning, the Administrative Law Judge cannot give that statement weight. The statement itself can only be used when there are medical records to give such statements credibility. The entirety of medical records used in the current case is a two-page psychiatric evaluation from [redacted] that is more relevant for the fact that it shows claimant is noncompliant with treatment. The evaluation, as brief as it is, does not provide the background that would give significant weight to the claimant's treating source statement. Therefore, as the DHS-49E is unsupported by medical evidence, the Administrative law Judge cannot assign the form enough weight to overcome claimant's burden of proof in showing an impairment that negatively effects his work-related abilities.

Additionally, there is no evidence of diabetes in the record and, thus, diabetes cannot be considered as a disabling impairment, as it is not documented.

With regard to claimant's alleged bone spurring, claimant has provided a single radiology report to support his symptoms. He has provided no other diagnoses, treatment records, medical notes, or other indications to show that this condition gives any impairment with regard to work-related functions. Furthermore, by claimant's own testimony, the bone spurring is not new and has been a condition for most of his life; claimant has held several jobs with this spurring, and there are no records that indicate that the spurring has worsened in a way to provide functional limitations that had not been previously documented.

In short, the Administrative Law Judge has not been provided the evidence to show disability. Claimant has provided a very sparse medical record that does not meet the burden of proof in showing a significant impairment that affects work-related functioning.

Therefore, without medical evidence, the Administrative Law Judge cannot find disability. While claimant may indeed have medical impairments that rise to the level of disability, without evidence proving such, the undersigned cannot find that claimant has met his burden of proof.

Claimant has not presented the required competent, material, and substantial evidence which would support a finding that he 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 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.

As a determination of not disabled has been made at step two of the sequential analysis, no further analysis is required. 20 CFR 416.920.

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: October 12, 2012

Date Mailed: October 12, 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: