

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

IN THE MATTER OF:

Reg. No.: 2012 72010

Issue No.: 2009

Hearing Date: December 12, 2012

County: Oakland (04)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 December 12, 2012. Claimant appeared and testified. [REDACTED], the Claimant's Authorized Hearing Representative, also appeared. [REDACTED] [REDACTED] [REDACTED] Assistance Payments Supervisor, and [REDACTED] [REDACTED], Assistance Payments Worker, also appeared on behalf of the Department of Human Services.

ISSUE

Whether the Department of Human Services (DHS or Department) properly determined that Claimant is not "disabled" for purposes of the Medical Assistance program (MA-P)?

FINDINGS OF FACT

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

1. The Claimant submitted an application for public assistance seeking MA-P and retro (March 2012) MAP-P benefits on May 2, 2012.
2. On May 25, 2012, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 2).
3. The Department notified the Claimant of the MRT determination on May 25, 2012.

4. On August 15, 2012, the Department received the Claimant's timely written request for hearing. (Exhibit 1)
5. On October 1, 2012, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
6. The Claimant alleged physical disabling impairments with chronic neck pain with cervical spinal stenosis, sleep apnea and heart disease (acute coronary syndrome).
7. The Claimant has not alleged any mental disabling impairment(s).
8. At the time of hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth date; was 6' 2" in height; and weighed 230 pounds.
9. The Claimant has a GED and attended special education classes throughout his education years. The Claimant has an employment history working in construction performing home building including carpentry, cement work and finish carpentry. The Claimant also managed several restaurants and performed management tasks including food ordering, paying bills and cooking.
10. At the time of the hearing the Claimant was not substantially gainfully employed and is currently not working.
11. An Interim Order was issued on December 19, 2012 and new evidence submitted was transmitted to the State Hearing Review Team.
12. On May 9, 2013 the State Hearing Review Team found the Claimant not disabled.
13. Claimant's limitations have lasted or are expected to last for 12 months or more.

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 of Human Services (DHS or 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 for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the 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 sequential evaluation process by which current work activity, the severity of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) 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, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. (SGA) 20 CFR 416.920(b).

In this case, Claimant is not currently working. Claimant testified credibly that he is not currently working and the Department presented no contradictory evidence. Therefore, Claimant may not be disqualified for MA at this step in the sequential evaluation process.

The severity of the claimant’s alleged impairment(s) is considered under Step 2. The claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(b)(c).

A severe impairment is an impairment expected to last twelve 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 second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

As a result, the Department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimus* hurdle" in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

In this case the Claimant presented medical evidence which is summarized below.

A Medical Examination Report was completed [REDACTED] by the Claimant's orthopedic doctor. The Claimant's condition was noted as stable and the diagnosis was cervical spinal stenosis. MRI showed severe stenosis at C4-C6 with cord compression. Limitations were imposed which were expected to last 90 days or longer. The Claimant could never lift more than 10 pounds. The doctor last saw the Claimant in [REDACTED] and indicated at that time to the Claimant that he should have surgical decompression, a corpectomy C5, fusion C4-C5, C5-C6 with fibular graft and plating. The notes indicated that the Claimant was deathly afraid of the surgery. The note concluded that there was no doubt in the doctor's mind that the Claimant would need operative treatment.

The Claimant went to the emergency department on [REDACTED] with a complaint of chest pain with radiation to his back. This was 8 months post catheterization with 30% blockage in the LAD. The examination which was performed noted normal heart rate and rhythm, no murmur, normal peripheral perfusion, no edema. The Differential diagnosis was myocardial infarction,

unstable angina, angina, pulmonary embolism, atypical chest pain and aortic dissection. An Electrocardiogram concluded Impression was sinus tachycardia with PAC noted but no evidence of acute ischemia. An examination of the Claimant's lungs and chest noted no active pulmonary disease. The diagnosis was precordial chest pain. Claimant was discharged home in improved condition.

On [REDACTED] the Claimant was seen for arm swelling with radiating pain with moderated degree of pain. The diagnosis was acute forearm cellulitis and the Claimant was admitted to the hospital. The final diagnosis was wasp bite and the Claimant was treated with antibiotics and steroids. The Claimant was discharged to home after a one day stay.

The Claimant was hospitalized due to severe sub sternal chest pain radiating to the left arm and through to the back on [REDACTED]. The EKG showed sinus arrhythmia with PACs. Chest CT showed no pulmonary embolism. Impression was acute coronary syndrome, MIMI 2 angina class 3-4. Plan to perform left heart catheterization. The left main artery showed a mid 30% narrowing and the global systolic dysfunction with an ejection fraction that is about 40%.

In this case, Claimant has presented the required medical data and evidence necessary to support a finding that he has significant physical limitations upon his ability to perform basic work activities such as sitting, standing, lifting, pushing, pulling, reaching, carrying or handling. Medical evidence has clearly established that Claimant has an impairment (or combination of impairments) that has more than a minimal effect on Claimant's work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, meets or medically equals the criteria of an impairment listed in Appendix 1 of Subpart P of 20 CFR, Part 404. (20 CFR 416.920 (d), 416.925, and 416.926.) This Administrative Law Judge finds that the Claimant's medical record will support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A.

This Administrative Law Judge consulted listing 1.04 Musculoskeletal, Disorders of the Spine when making the evaluation of listings.

The requirements for listing 1.04 Disorders of the spine, (eg. herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, ...) resulting in compromise of a nerve root, 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

The Claimant's credible testimony established that he has difficulty bending and squatting and putting on his socks due to his neck and associated pain and numbness with his right hand, arm and shoulder radiating to his leg and foot with loss of reflexes. The Claimant further credibly testified that he can stand 20 to 30 minutes and his left leg goes numb. He can sit an hour and then must move. He can lift/carry one quart of milk.

The Claimant's treating doctor gave an opinion and imposed restrictions based upon a prior MRI which demonstrated that Claimant should have spinal decompression and the doctor further recommended a corpectomy at C5 and fusion at C4-C5 and C5-C6 with fibular graft and plating. The Claimant has existing rods in his lumbar spine due to a prior automobile accident where he broke his back and neck. The diagnosis was cervical spinal stenosis with cord compression at C4-C-6. An updated Medical Examination Report noted that the Claimant could never lift more than 10 pounds and this limitation was expected to last 90 days or longer. The Claimant also credibly testified to dropping things due to inability to lift more than a quart of milk. Lastly, the Claimant also credibly testified that he experiences continual pain and loss of strength to hold onto objects.

In this case, this Administrative Law Judge finds, based upon the objective medical evidence and the Claimant's testimony regarding his condition and abilities, that Claimant is considered presently disabled at the third step of the sequential evaluation. Deference was also given to the opinion of the Claimant's treating physician and the objective medical evidence. Claimant meets the listing for 1.04A, or its equivalent. The medical records establish ongoing severe chronic neck pain with spinal cord compression and involvement including reference to an MRI demonstrating spinal stenosis with muscle involvement which satisfies the requirements of listing 1.04A.

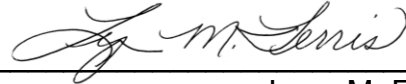
With regard to steps 4 and 5, when a determination can be made at any step as to the Claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Claimant is disabled for the purposes of MA and SDA programs. Therefore, the decisions to deny Claimant's application for MA -P and SDA were incorrect.

Accordingly, the Department's decision in the above stated matter is, hereby REVERSED.

1. The Department is ORDERED to initiate processing the Claimant's MA-P application dated May 2, 2012 with retro MA-P to March 2012 consistent with the application and award required benefits, provided Claimant meets all non-medical standards required for eligibility as well.
2. The Department is further ORDERED to initiate a review of the Claimant's disability case in June 2014, in accordance with department policy.



Lynn M. Ferris
Administrative Law Judge
For Maura Corrigan
Department of Human Services

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 to:
Michigan Administrative hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

LMF/cl

2012-72010/LMF

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]