

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

IN THE MATTER OF:

[REDACTED] OAD
DETROIT MI 48221

Reg. No.: 2012-9698
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: January 30, 2012
County: Wayne (82-15)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, MCL 400.37 and Claimant's request for a hearing. After due notice, a telephone hearing was held on January 30, 2012. Claimant appeared and testified. The Department of Human Services (Department) was represented by [REDACTED]

ISSUE

Did the Department properly determine that Claimant is not disabled for purposes of the Medical Assistance (MA-P) and State Disability Assistance (SDA) programs?

FINDINGS OF FACT

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

1. On March 7, 2011, Claimant filed an application for MA and SDA benefits. The application requested MA-P retroactive to December 1, 2010.
2. On July 6, 2011, the Department denied Claimant's application based on a finding that Claimant did not meet the requisite disability criteria.
3. On July 13, 2011, Claimant filed a hearing request to protest the Department's determination.
4. Claimant, age forty-nine ([REDACTED]), has a high-school Graduate Equivalency Diploma.

5. Claimant last worked in 1985 as a carpenter's assistant. Claimant's relevant work history consists exclusively of unskilled heavy work activities.
6. Claimant has a history of loss of vision in his left eye (impairment onset date [REDACTED]) and coronary artery disease (impairment onset date [REDACTED] or earlier).
7. On [REDACTED], Claimant was hospitalized and had coronary artery surgery. His discharge diagnosis was successful percutaneous coronary intervention of the distal right coronary artery with balloon angioplasty followed by stenting.
8. In [REDACTED], Claimant was hospitalized with chest pain at Henry Ford Health Systems.
9. Claimant currently suffers from left-eye blindness and coronary heart disease.
10. Claimant has severe limitations on his ability to walk and to lift and carry over fifty pounds. Claimant's limitations have lasted or are expected to last twelve months or more.
11. Claimant's complaints and allegations concerning vision and heart impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

CONCLUSIONS OF LAW

MA was established by Title XIX of the U.S. Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department administers MA 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 Reference Tables (RFT).

SDA provides financial assistance for disabled persons and was established by 2004 PA 344. The Department administers SDA pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in BAM, BEM and RFT.

Federal regulations require the Department to use the same definition for "disabled" as the U.S. Social Security Administration uses for Supplemental Security Income (SSI) benefits applications under Title XVI of the U.S. 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 five-step sequential evaluation process by which current work activity (Step 1), the severity of the impairment(s) (Steps 2 and 3), current physical and mental impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) (Steps 4 and 5) 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, no evaluation under a subsequent step is necessary.

Going now into the required five-step evaluation, Step 1 requires the trier of fact to determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, Claimant is not working. Therefore, Claimant is not disqualified for MA at Step 1 of the sequential evaluation process.

Second, Step 2 requires that in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. 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 Step 2 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 screen out at this level only those claims which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimis* hurdle" in the disability determination. The *de minimis* standard is a provision of law that allows the court to disregard trifling matters.

In this case, Claimant has presented the required medical data and evidence necessary to support a finding that Claimant has significant physical limitations upon his ability to perform basic work activities such as walking more than one mile, and lifting and carrying more than fifty lbs. Medical evidence clearly establishes that Claimant has an impairment that has more than a minimal effect on Claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63.

As Claimant meets the severity requirement of Step 2, the trier of fact must next consider Step 3 of the sequential consideration of a disability claim. In Step 3, the trier of fact must determine if the claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404-Listing of Impairments.

This Administrative Law Judge finds that Claimant's medical record will not support a finding that Claimant's impairment is a "listed impairment" or that it is equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Claimant cannot be found to be disabled based upon the medical evidence alone. 20 CFR 416.920(d). Therefore, it is necessary to go on to Step 4 of the evaluation process.

In Step 4 of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment prevents her/him from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical findings that Claimant is not capable of the walking, lifting and carrying required by his past employment in 1979-1985 as a carpenter's assistant. Claimant gave credible and un rebutted testimony that he worked 5-6 years as a carpenter's assistant. His duties included laying carpet and tile, building cabinets, and plumbing work. He testified that on average, the lifting requirement on this job was sixty lbs.

Claimant gave additional credible and un rebutted testimony that he was advised by two physicians not to do any heavy lifting. It is found and determined that Claimant has presented the required medical data and evidence necessary to support a finding that he is not, at this point, capable of performing work as a carpenter's assistant.

As the Claimant is not found disabled at Step 4 of the evaluation process, the Step 5 requirements must now be considered. In Step 5, the trier of fact must determine if Claimant's impairment prevents Claimant from doing other work. 20 CFR 416.920(f). This determination is based upon Claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-416.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which Claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS*, 161 Mich. App 690, 696 (1987). Once Claimant reaches Step 5 in the sequential review process, Claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6th Cir, 1984). At this point, the burden of proof is on the Department to prove by substantial evidence that Claimant has the residual functional capacity for substantial gainful activity. Medical-Vocational Guidelines found at 20 CFT Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in

the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary of Health and Human Services*, 667 F2d 524, 529 (CA6 1981), *cert den*, 461 US 957 (1983).

In this case, the evidence reveals that Claimant suffers from coronary artery disease with stent placement surgery [REDACTED] and recurrent chest pain. Claimant's physicians during his two hospitalizations [REDACTED] advised him to do no heavy lifting. Claimant's ability to walk is limited to one mile. Claimant has not worked since 1985 and received nominal additional training during his seventeen years' incarceration [REDACTED]

Claimant gave credible and un rebutted testimony that he does little or no housework, cooking, shopping and yard work. On an average, day he watches sports on television and sits around waiting to be called for a job. He was rejected from at least one job because the job required lifting more than fifty lbs. at a time.

Claimant testified he can drive and has a valid driver's license. Most of his medications are related to his heart condition: aspirin, Niacin, Amlodipine, and Lisinopril (he also takes Prilosec). His heart condition is considered permanent. When he experiences chest pain, which occurs "once in a while," he has pain on a scale of 4-5 out of 10 for two minutes. Claimant does not smoke or use alcohol or drugs.

Claimant is currently forty-nine years old and will become fifty on [REDACTED]. His last employment was twenty-seven years ago, in 1985. Turning to the vocational guidelines, it is found that Claimant is capable of sedentary work based on his limited ability to walk and his limited lifting and carrying abilities. At the present time, Claimant is forty-nine years old, and his situation puts him in category 201.18 of the vocational guidelines. An individual in this category is not disabled for purposes of MA eligibility.

However, on [REDACTED], Claimant reaches the age of fifty years old, and his disability category changes to section 201.12, which is a category with disability status. Accordingly, it is found that as of [REDACTED], Claimant is eligible under the vocational guidelines for MA benefits.

In conclusion, after careful review of Claimant's extensive medical record and the Administrative Law Judge's personal interaction with Claimant at the hearing, this Administrative Law Judge finds that beginning [REDACTED], Claimant's exertional and non-exertional impairments render him unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P, Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The Department has failed to provide vocational evidence which establishes that Claimant has the residual functional capacity for substantial gainful activity and that, given Claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which the Claimant could perform despite his limitations.

Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program. The Department's denial of MA benefits to Claimant is AFFIRMED up until the date of [REDACTED]. The Department's denial of MA benefits is REVERSED effective [REDACTED].

Considering next whether Claimant is disabled for purposes of SDA, the individual must have a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of MA benefits based upon disability or blindness (or receipt of SSI or RSDI benefits based upon disability or blindness) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM Item 261. Inasmuch as Claimant has been found disabled for purposes of MA, he must also be found disabled for purposes of SDA benefits ninety days after his fiftieth birthday, [REDACTED]. SDA benefits are granted beginning ninety days after Claimant's receipt of MA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides and concludes that on [REDACTED] when Claimant reaches fifty years of age, he meets the definition of medically disabled under the Medical Assistance and SDA programs. It is also decided and determined that Claimant is not eligible for MA and MA-retroactive benefits prior to that date.

Accordingly, the Department is ordered to:

1. Initiate a review of the Claimant's MA and SDA application, if it has not already done so, to determine if the nonmedical eligibility criteria for MA and SDA benefits have been met;
2. Initiate procedures to inform Claimant of its determination in writing and provide MA-P and SDA benefits to Claimant at the benefit levels to which he is entitled.
3. Assuming that Claimant is eligible for program benefits, initiate procedures to review Claimant's continued eligibility for program benefits in March 2013.
4. All steps shall be taken in accordance with Department policy and procedure.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: January 31, 2012

Date Mailed: January 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

JL/pf

cc:

