

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-14116
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: February 6, 2012
County: Wayne (82-31)

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 February 6, 2012, from Detroit, MI. Claimant appeared and testified. [REDACTED] Claimant's niece, appeared and testified on Claimant's behalf. 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 upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On December 22, 2010, Claimant filed an application for MA and SDA benefits. The application requested MA-P retroactive to October 1, 2010.
2. On August 24, 2011, the Department denied Claimant's application for benefits based on a finding that Claimant did not meet the requisite disability criteria.
3. On November 21, 2011, Claimant filed a hearing request to protest the Department's determination.

4. Claimant, age thirty-five, has an eleventh-grade education. He is 5'3" and weighs 255 lbs.
5. In 2005, Claimant worked as a food preparer at [REDACTED] restaurants. He made pizza dough at [REDACTED], and he was a fryer cook at [REDACTED]. He has had no employment before or since. Claimant's relevant work history consists exclusively of light exertional work activities.
6. Claimant has a history of congenital heart disease. He had his first heart surgery in [REDACTED] at birth and two more heart surgeries by the age of six.
7. Claimant has not been hospitalized as an adult.
8. Claimant also suffers currently from anxiety attacks, which began when Claimant's father died in [REDACTED]. He is under the care of [REDACTED].
9. Claimant has severe limitations in dressing and bathing, as well as other activities of daily living. Claimant's limitations have lasted or are expected to last twelve months or more.
10. Claimant's complaints and allegations concerning physical and mental 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.

Turning now to 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 unemployed. Therefore, Claimant is not disqualified for MA at Step 1 of the sequential evaluation process.

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 he has significant physical and mental limitations upon his ability to perform basic work activities such as sustaining an ordinary routine, concentrating for extended periods of time, making simple work-related decisions, traveling, and setting realistic goals. Medical evidence clearly establishes that Claimant has an impairment (or combination of impairments) 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 (or combination of impairments) 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 and all of the testimony in this case considered as a whole, 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. Accordingly, Claimant is found disabled based upon the medical evidence alone. 20 CFR 416.920(d).

The Listings used in this case to determine that Claimant is disabled based solely on medical evidence in Step 3 are Listing 4.00 - Cardiovascular System and Listing 12.00 - Mental Disorders. Subsection 4.00B3 presents the requirements for a finding of cardiovascular disability when the claimant has not had ongoing medical treatment:

What if you have not received ongoing medical treatment?

- a. You may not have received ongoing treatment or have an ongoing relationship with the medical community despite the existence of a severe impairment(s). In this situation, we will base our evaluation on the current objective medical evidence and the other evidence we have. If you do not receive treatment, you cannot show an impairment that meets the criteria of most of these listings. However, we may find you disabled because you have another impairment(s) that in combination with your cardiovascular impairment medically equals the severity of a listed impairment or based on consideration of your residual functional capacity and age, education and work experience.
- b. Unless we can decide your claim favorably on the basis of the current evidence, a longitudinal record is still important. In rare instances where there is no or insufficient longitudinal evidence, we may purchase a consultative examination(s) to help us establish the severity and duration of your impairment.

Appendix 1 of Subpart P of 20 CFR, Part 404, Part A, Section 4.00B3.

In this case, the medical evidence indicates that Claimant's heart condition is equal to a listed impairment in that he had three emergency room visits in thirteen months for chest pain and anxiety attacks ([REDACTED]). He had an abnormal echocardiogram in [REDACTED] which showed close to normal ejection fraction with left ventricular hypertrophy. He experiences shortness of breath. He experiences episodes of chest pain in a lying-down position, lasting 20-25 minutes. He needs assistance changing clothes and cannot bathe himself. He can walk only ½ block at a time.

The supportive testimony of [REDACTED], Claimant's niece, was credible and un rebutted. She corroborated Claimant's testimony and presented greater detail regarding Claimant's impaired condition. [REDACTED], who is 21, has been caring for Claimant since she was 16. She now lives about 2½ miles from Claimant and takes a bus to his home to attend to him 4-5 times per week. She has to feed him sometimes,

and she sits with him when he has crying spells. She makes sure he takes his medicine and takes him to doctors' appointments. [REDACTED] also testified that Claimant's nephew [REDACTED] performs these tasks for Claimant as well.

While it is true that Claimant has not received ongoing treatment for his heart condition, his medical history, his limited activities of daily living, his three visits to the emergency room for chest pain within a 13-month period, and his abnormal ECG are, in the opinion of the undersigned, equivalent to Listing of Impairment 4.06, symptomatic congenital heart disease. It is found and determined that the evidence in this case considered as a whole supports a conclusion that Claimant's cardiovascular impairment meets Listing 4.06, symptomatic congenital heart disease.

In addition, in this case Claimant has an anxiety disorder which was diagnosed in [REDACTED] when his father died. Claimant gave credible and un rebutted testimony that when this event occurred, he could not remain alone in the house and required company at all times. He has had anxiety attacks 3-4 times per week since [REDACTED] and was prescribed Xanax, Alprazolam, Citalopram hydrobromide, Celexa and Trazodone. He treats for anxiety and depression with a psychiatrist at [REDACTED], and also saw a therapist at a crisis center in late [REDACTED].

Claimant has difficulty making decisions on his own, and he is very nervous and upset. He has not driven a car for many years because he gets nervous behind the wheel and has to pull over and stop the car. He is afraid to take a bus without a companion because he is afraid to be alone.

It is found and determined, based on the evidence considered as a whole in this case, that Claimant's mental impairment is the equivalent of Listing 12.06 – Anxiety Related Disorders. This determination is based on Claimant's credible and un rebutted testimony that he has

a persistent irrational fear of a specific ... activity, or situation which results in a compelling desire to avoid the dreaded ... activity or situation; ... [r]esulting in complete inability to function independently outside the area of one's home. Listing 12.06A2 and C.

A decision is also made herein that Claimant has a combination of concurrently severe impairments, taking into consideration all of the evidence in the record as a whole and in fulfillment of the Federal regulation that the

combined effect of all of your impairments without regard to whether any such impairment, if considered separately, would be of sufficient severity. If we do find a medically severe combination of impairments, the combined impact of the impairments will be considered throughout the disability determination process. If we do not find that you have a medically severe combination of impairments, we will determine that you are not disabled (see Secs. 416.920 and 416.924). 20 CFR 416.923.

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 REVERSED.

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 ninety 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.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides and concludes that Claimant meets the definition of medically disabled under the Medical Assistance and State Disability Assistance programs.

Accordingly, the Department is ordered to:

1. Initiate a review of the Claimant's December 22, 2010, application, if it has not already done so, to determine if all other nonmedical eligibility criteria for MA, MA-retroactive and SDA benefits have been met;
2. Initiate procedures to inform Claimant of the Department's determination in writing, and provide MA-P, MA-P retroactive, 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: February 8, 2012

Date Mailed: February 8, 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:

