

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-742
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 17, 2012
County: Wayne (82-19)

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 hearing was held on January 17, 2012. Claimant appeared and testified. [REDACTED] Claimant's parents, also appeared and testified. The Department of Human Services (Department) was represented by [REDACTED]

ISSUE

Did the Department properly determine that Claimant is not disabled, and is ineligible for Medical Assistance (MA-P) and MA-P retroactive benefits?

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 July 19, 2011, an application was filed on Claimant's behalf for MA benefits. The application requested MA-P retroactive to April 1, 2011.
2. On August 29, 2011, the Department denied Claimant's application for benefits based on a finding that Claimant did not meet the requisite disability criteria.
3. On September 19, 2011, Claimant filed a hearing request to protest the Department's determination.
4. Claimant, age fifty-four, has a high school diploma and one year of college.

5. Claimant last worked in December 2010 as a telemarketer.
6. [REDACTED] is the date of onset of Claimant's impairment. Claimant had aortic valve replacement surgery in [REDACTED] [REDACTED], Claimant was hospitalized for left side chest pain, shortness of breath, and leg and ankle swelling. Her discharge diagnosis was that her chest pain required continued medication and follow-up treatment with a cardiologist. In [REDACTED], Claimant suffered a massive heart attack and was hospitalized for thirty days.
7. Claimant has severe limitations upon her mobility, strength and ability to manage stress. Claimant's limitations have lasted twelve months or more.
8. Claimant's complaints and allegations concerning cardiac-related impairments and limitations, when considered in light of all the objective medical evidence, as well as the entire 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 Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM) and 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 subsequent steps are 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 not presently working and is, accordingly, not automatically disqualified by the fact she is employed. 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 is to screen out claims lacking medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may screen out at Step 2 only those claims which are "totally groundless" based only on medical data. 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 she has significant physical limitations upon her ability to perform basic work activities such as walking, climbing stairs, sitting for lengthy periods of time, and managing stressful activity. Medical evidence in the record clearly establishes that Claimant has a heart condition that has more than a minimal effect on her 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 evidence supports a finding that Claimant's impairment(s) is a "listed impairment" or its equivalent. See

Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Claimant meets Listing 4.04B, Ischemic Heart Disease, or its equivalent, as she suffered

“[t]hree separate ischemic episodes, each requiring revascularization or not amenable to revascularization... within a consecutive 12-month period...”

Accordingly, Claimant is disabled at Step 3 of the evaluation process, based upon the medical evidence. 20 CFR 416.920(d).

The evidence in the record in this case indicates that Claimant had heart surgery, an aortic valve replacement surgery, in [REDACTED]. In [REDACTED], she had chest pain and shortness of breath and was admitted to the hospital from the emergency department. She suffered a massive heart attack in [REDACTED] and was hospitalized for thirty days.

Claimant takes seven heart medications: Corag, Lisinopril, Nitrostat, Furosemide, Carvedilol, Warfarin (Coumadin), and Isosorb.

One week ago, Claimant’s cardiologist advised her that her current aortic valve replacement is faulty. On [REDACTED], Claimant was examined by her cardiologist, [REDACTED]. [REDACTED] told her that the [REDACTED] heart attack damaged her heart, the valve replacement was a faulty one, and she needed a new aortic valve replacement. [REDACTED] prepared a “Medical Source Statement of Ability to do Work-Related Activities (Physical),” stating that Claimant “must periodically alternate sitting and standing to relieve pain or discomfort.” He stated that alternation is required because of her “acute pain.” [REDACTED] also advised Claimant that any work is going to be stressful because of her condition.

Claimant is diabetic and takes diabetes tablets and insulin. She received a two-month supply of insulin from [REDACTED] when she was discharged in [REDACTED].

Claimant gave credible and un rebutted testimony that she cannot walk a whole block. She cannot perform telemarketing work because of the stress involved. As a telemarketer, the supervisors watch you constantly and want you to hurry up. Every sales call is monitored and critiqued. There are specified times for breaks, employees must remain at their desks, and bathroom visits are scheduled. The bathroom schedule is particularly stressful as Claimant is diabetic and requires bathroom access on an as-needed basis.

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 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, she must also be found disabled for purposes of SDA benefits and may be eligible for these 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 program as of July 19, 2011, the date of her application.

Accordingly, the Department is ordered to:

1. Initiate a review of Claimant's July 19, 2011, application, if it has not already done so, to determine if all nonmedical eligibility criteria for MA and MA-retroactive benefits have been met;
2. Initiate procedures to inform Claimant of its determination in writing, and to provide MA-P and MA-P retroactive benefits to Claimant at the benefit level to which she is entitled;
3. Assuming that Claimant is eligible for program benefits, initiate procedures to review Claimant's continued eligibility for program benefits no earlier than February, 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 30, 2012

Date Mailed: January 30, 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:

