

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

IN THE MATTER OF:

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Reg. No.: 14-012165
Issue No.: 2009
Case No.: ██████████
Hearing Date: November 19, 2014
County: WAYNE-19 (INKSTER)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a three way telephone hearing was held on November 19, 2014, from Detroit, Michigan. Participants on behalf of Claimant included AHR ██████████ and ██████████. Participants on behalf of the Department of Human Services (Department) included ██████████ Medical Contact Worker.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) and/or State Disability Assistance (SDA) benefit programs?

FINDINGS OF FACT

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

- (1) Claimant applied for MA-P April 25, 2014.
- (2) Claimant is ██████████ old.
- (3) Claimant is not currently working.
- (4) Claimant alleged disability due to epilepsy, arthritis, generalized aches and pain, and symptoms related to epilepsy.
- (5) Claimant alleged memory loss and cognitive disorders at the hearing, but had not applied for MA-P on the basis of this disorder.

- (6) Claimant had one seizure in February, 2014, and has not had a seizure since.
- (7) Prior to this event, Claimant had had 2 seizures in the past 9 years
- (8) Claimant submitted no evidence with related to arthritis or generalized pain.
- (9) Claimant alleges balance issues, migraines and blurry vision as continuing symptoms related to the seizure of February, 2014.
- (10) In October, 2014, medical reports indicated that the migraines have improved, and that Claimant has only intermittent headaches.
- (11) No evidence was submitted that Claimant's initial allegations of blurry vision have persisted.
- (12) While Claimant was still walking with an antalgic gait as of October, 2014, Claimant had no ataxia or other balance issues; furthermore, there is no evidence that the antalgic gait would persist for a period of 12 months.
- (13) A neuropsychological evaluation conducted on September 3, 2014 notes that there had been "no clear change in cognitive functioning" since February, 2014.
- (14) This evaluation noted that gait and motor activity were unremarkable, and that expressive language was normal.
- (15) This evaluation noted a tendency in the Claimant to over-report cognitive complaints.
- (16) A CT of the brain conducted on February 18, 2014 was unremarkable.
- (17) An EEG conducted on February 19, 2014 did not reveal any epileptiform activity or evidence of focal cerebral dysfunction.
- (18) Per testimony, Claimant has headaches 4-5 times per month, has no lifting, standing, walking or sitting restrictions, and is only required to see a neurologist ever 4-6 months.
- (19) Claimant currently performs all activities of daily living (including driving), and participates in hobbies such as fishing.
- (20) On June 18, 2014, the Medical Review Team denied MA-P, stating that Claimant did not meet durational requirements.
- (21) On June 23, 2014, Claimant was sent a notice of case action.

- (22) On September 11, 2014, Claimant filed for hearing.
- (23) On November 19, 2014, a hearing was held before the Administrative Law Judge; the record was extended for additional medical evidence.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

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 are necessary. 20 CFR 416.920

The first step that must be considered is whether the Claimant is still partaking in Substantial Gainful Activity (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 2014 is \$1,800. For non-blind individuals, the monthly SGA amount for 2014 is \$1070.

In the current case, Claimant testified that they were not working, and the Department has presented no evidence or allegations that Claimant is engaging in SGA. Claimant has not been engaging in SGA during any of the time this application and hearing have been pending. Therefore, the undersigned holds that the 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. 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.

The medical record consists of a single hospitalization for a seizure in February, 2014. Claimant was treated and was stated to be improving. Claimant has not had a seizure since this date, and prior to this seizure, has reported 2 additional seizures in the course of the past 9 years. This pattern does not indicate a frequency that shows that the condition meets durational requirements. Additionally, submitted medical reports show continual improvement since the incident in February, 2014, with no indication that Claimant's symptoms from the incident will continue past the 12 month durational requirement.

While Claimant alleges headaches 4-5 times per month, medical reports show that the issue is improving; there is no indication that this symptom will last more than 12 months.

Other symptoms from the incident, including balance issues and blurry vision have already improved. While Claimant still had an antalgic gait as of October, 2014, there was nothing in the medical record that suggested that this gait would continue, or that the gait had any effect on Claimant's work related activities. Furthermore, there is a dispute as to whether this gait exists; a neuropsychological workup from September, 2014 notes that Claimant's gait and motor function were "unremarkable".

This same workup also noted that there was no clear change in cognitive functioning since February, and that furthermore, Claimant had a tendency to over-report complaints of cognitive dysfunction.

Claimant has since resumed all activities of daily living, including hobbies such as fishing.

Finally, all objective testing, including an EEG and a CT scan, have come back unremarkable, with no evidence that Claimant's condition or symptoms would persist.

Lastly, while Claimant's AHR argued that Claimant had "staring spells" that were consistent with petit mal seizures, there is no medical evidence in the packet documenting these "spells", and furthermore, even if the "spells" did exist, no evidence correlating these spells with petit mal seizures.

As a final note, Claimant alleged memory loss and unspecified cognitive disorders at the hearing; these conditions were not part of the initial application, and are not ripe for adjudication here. Regardless, given that the neuropsychological work up stated that Claimant had no change in cognitive functioning since the February, 2014 seizure, it is highly doubtful that these conditions meet the definition of a severe impairment. Per Claimant's description during the exam, examples of memory loss include failure to pay bills on time or balance the checkbook. One can have a "horrible memory" (as described in the neuropsychological exam), without such a memory being considered a severe impairment; forgetting to pay bills is, one could argue, quite normal.

There is no evidence that this condition will meet durational requirements. While the initial symptoms and impairments as a result of the seizure incident in February, 2014 were significant and severe, there is no evidence that these symptoms will persist for the required 12 month duration. As such, Claimant as failed to meet their burden of proof in presenting evidence of a severe impairment, and as such, fails to pass step 2.

Claimant has not presented the required competent, material, and substantial evidence which would support a finding that the Claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities for a period of 12 months or more. 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 or 90 days (for the purposes of the SDA program). 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) or SDA program.

As a finding of not disabled can be made at the step two of the five step process, no further analysis is required. 20 CFR 416.920

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant not disabled for purposes of the MA and/or SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED.



Robert J. Chavez
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/2/2015**

Date Mailed: **3/2/2015**

RJC / tm

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

CC:

[REDACTED]