

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

IN THE MATTER OF:

██████████
██████████
██████████████████

Reg. No.: 2013-47853
Issue No(s): 2009; 4009
Case No.: ██████████
Hearing Date: November 6, 2013
County: Oakland (04)

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 telephone hearing was held on November 6, 2013, from Detroit, Michigan. Participants on behalf of Claimant included ██████████ AHR ██████████ of ██████████. Participants on behalf of the Department of Human Services (Department) included ██████████, and ██████████ ES.

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 and SDA on January 14, 2013.
2. Claimant is ██████ years old.
3. Claimant has a limited education.
4. Claimant is not currently working.

5. Claimant has a neurofibromatosis, with secondary seizures and learning disabilities.
6. Claimant has a verbal IQ of 71, with a verbal comprehension index in the 1st percentile.
7. Claimant is illiterate.
8. Claimant has frequent nonconvulsive epilepsy, with seizures occurring more frequently than once per week, despite ongoing treatment, which is consistent with his diagnosis of neurofibromatosis 1.
9. These symptoms have more than a de minimus effect on claimant's ability to do basic work activities.
10. There is no indication that claimant will recover from this impairment within 12 months.
11. Claimant has worked in unskilled positions, but has needed reasonable accommodations to perform this work.
12. Claimant has difficulties with short-term memory and will often get lost if away from familiar surroundings.
13. On April 18, 2013, the Medical Review Team denied MA-P and SDA, stating that claimant could perform other work.
14. On April 24, 2013, claimant was sent a notice of case action.
15. On May 10, 2013, claimant filed for hearing.
16. On July 25, 2013, the State Hearing Review Team denied MA-P and SDA, stating that claimant could perform past work.
17. On November 6, 2013, a hearing was held before the Administrative Law Judge.
18. The record was extended for additional medical documentation and consultative exams.
19. Requested consultative exams were not scheduled.
20. On April 11, 2014, SHRT again denied MA-P and SDA, finding claimant capable of other work.

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

On November 6, 2013, an interim order was issued that ordered the Department to schedule a consultative examination with a neurologist in order to determine the extent and limitations of claimant’s neurofibromatosis. No evidence was submitted to show that such an examination was ever scheduled. As such, in instances where the undersigned would need to make determinations that would require the findings of this examination, the undersigned will assume that the examination would have resulted in findings that are the most beneficial to the claimant.

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 2013 is \$1,740. For non-blind individuals, the monthly SGA amount for 2013 is \$1040.

In the current case, claimant has presented competent material evidence that they are not engaging in SGA and therefore passes the first step.

The second step that must be considered is whether or not the claimant has a severe impairment. 20 CFR 416.920(c). 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 presented competent material evidence of an impairment that meets durational requirements and therefore passes the second step.

In the third step of the sequential evaluation, we must determine if the claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.925. This is, generally speaking, an objective standard; either claimant's impairment is listed

in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of “not disabled”; if the claimant’s impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that the claimant’s medical records contain medical evidence of an impairment that meets or equals listing 11.03 and 12.05 C. Claimant has testified to non-convulsive seizures that occur more frequently than once per week (which is consistent with his diagnosis of neurofibromatosis I, and the undersigned will assume that the requested consultative examination would have supported this testimony). Furthermore, claimant has been found to have a verbal IQ score of 71, with a verbal comprehension index in the 1st percentile. IQ scores are generally fall within a range that encompass both a high end and a low end (see, psychological examination, SHRT packet, page three). Therefore, it is reasonable to assume that claimant’s IQ of 71 is within a range that is functionally equivalent to the requirements of listing 12.05 C. Claimant is illiterate and was in special education classes, which reasonably supports an onset of disabilities before age 22. Learning disabilities are also consistent with a diagnosis of neurofibromatosis I.

Therefore, claimant is found disabled at step three, and the Department erred when it denied claimant’s Medicaid application for lack of disability. Claimant has been disabled since at least October, 2012.

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. Therefore, the Administrative Law Judge sees no reason to continue his analysis, as a determination can be made at step 3.

Furthermore, as claimant meets all disability requirements for the MA-P program, claimant meets the disability requirements for the SDA program as well. BEM 261.

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 disabled not disabled for purposes of the MA and/or SDA benefit program.

DECISION AND ORDER

Accordingly, the Department’s determination is AFFIRMED REVERSED.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Process claimant's January 14, 2013 MA-P and SDA application and award required benefits, provided claimant meets all non-medical standards as well. The Department is further ORDERED to initiate a review of claimant's disability case in June, 2015.



Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 5, 2014

Date Mailed: June 5, 2014

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted 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 Department, AHR or the claimant 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 the hearing decision is mailed.

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 48909-07322

RJC/tm

cc:

[REDACTED]
[REDACTED]
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