

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-22930
Issue No(s): 2009;4009
Case No.: [REDACTED]
Hearing Date: May 21, 2014
County: Wayne (55)

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 May 21, 2014, from Detroit, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED], APW.

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 October 17, 2013.
- (2) Claimant is [REDACTED] years old.
- (3) Claimant has a limited education.
- (4) Claimant is not currently working.
- (5) Claimant alleged disability due to diabetes and amputation of the right fifth toe.

- (6) Claimant's right fifth toe was amputated in 2013; in August 2013, an examination noted that claimant had good drainage in the area, required no antibiotics, and was improving.
- (7) Claimant testified to continual improvement.
- (8) Claimant testified to no limitations in walking or standing and the toe amputation was "getting better".
- (9) Claimant testified that he had no limitations from diabetes at current and was controlling his condition through diet.
- (10) A medical examination report from November, 2013, did not list any physical limitations except for difficulty using the right foot immediately post amputation.
- (11) Claimant has not been hospitalized since September, 2013 for an infection at the amputation site.
- (12) Claimant alleged difficulties from arthritis; this allegation was not made at the time of application.
- (13) On December 16, 2013, the Medical Review Team denied MA-P, stating that claimant could perform other work.
- (14) On December 23, 2013, claimant was sent a notice of case action.
- (15) On January 14, 2014, claimant filed for hearing.
- (16) On March 7, 2014, the State Hearing Review Team denied MA-P, stating that claimant could perform other work.
- (17) On May 21, 2014, a hearing was held before the Administrative Law Judge.

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 2013 is [REDACTED]. For non-blind individuals, the monthly SGA amount for 2013 is [REDACTED].

In the current case, claimant testified that they are 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.

Claimant has alleged an impairment stemming from diabetes and a toe amputation in the summer of 2013. However, the only medical records in the packet arise from that hospital admission in August 2013, which noted that claimant was improving and drainage of the toe injury was good. Claimant was released in stable condition. There are no records that show claimant’s injuries or conditions are expected to last one year or more. Claimant has had no admissions since treatment in September, 2013.

A November, 2013 medical statement from a treating source lists no physical limitations in standing or walking, and notes that claimant may only have difficulties in operating foot and leg controls with the right foot; there is no indication that this difficulty will last more than 12 months.

Claimant testified that he had improved, and had no current difficulties with the toe. The medical record shows no limitations from claimant’s diabetes diagnosis, and claimant testified that his diabetes was well controlled with diet. There is no medical evidence to show that claimant has limitations will persist past 12 months.

Finally, while claimant testified to some difficulties with arthritis, this condition was not alleged on the initial application, and there are no medical records confirming this diagnosis; therefore the undersigned will not consider this condition with regard to this application.

There is no evidence that claimant cannot perform all activities of daily living, and the medical records do not show particular limitations in walking and standing. Claimant has no mental or cognitive defects.

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 disabled 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 Maura Corrigan, Director
Department of Human Services

Date Signed: June 24, 2014

Date Mailed: June 24, 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

LMF/tm

cc:

