

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 201416935
Issue No(s): 2009
Case No.: ██████████
Hearing Date: March 27, 2014
County: Wayne (17)

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 March 27, 2014, from Detroit, Michigan. Participants on behalf of Claimant included ██████████. 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 on July 25, 2013.
2. Claimant is ██████ years old.
3. Claimant has a limited education.
4. Claimant is not currently working.
5. Claimant has a medical history of seizures and dysfunction of the ankles.

6. Claimant has had convulsive seizures in April 2013, July 2013, two in August 2013, and two in February, 2014.
7. While the July seizures were caused by medication noncompliance, the other seizures appeared to have occurred while compliant with medication.
8. Claimant has plates in her ankles and has difficulty standing for long periods of time.
9. On October 9, 2013, the Medical Review Team denied MA-P, stating that Claimant's impairments were the result of drug and alcohol abuse materiality.
10. On October 16, 2013, Claimant was sent a notice of case action.
11. On December 5, 2013, Claimant filed for hearing.
12. On February 6, 2014, the State Hearing Review Team denied MA-P, stating that Claimant could perform other work.
13. On March 27, 2014, a hearing was held before the Administrative Law Judge; the record was extended for additional evidence.
14. The Department was ordered to secure medical records to confirm Claimant's testimony of frequent seizures and ankle dysfunction; these records were not returned.

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.

The Department was ordered to secure medical records that would confirm or disprove Claimant's allegations of frequent convulsive seizures and ankle dysfunction. These records were never secured or sent to the Administrative Law Judge. As the

Department was given and agreed to the responsibility to secure these records, and as these records would have been material to the disposition of the underlying case, the undersigned will, when faced with questions that require knowledge that would have been revealed by these medical records, assume that the answers are those which are most favorable to the Claimant.

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 \$1800. For non-blind individuals, the monthly SGA amount for 2014 is \$1070.

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 90 days 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 11.02 (A). While the evidence does not show specifically that Claimant is having seizures on average more than once per month, Claimant did testify to that effect; the purpose of securing Claimant’s hospital records was to confirm or disprove Claimant’s testimony. Thus, the undersigned must assume that the medical records in question would have confirmed that Claimant met the listings contained in 11.02 (A), by showing that Claimant’s testimony of convulsive seizures more than once per month on average was correct. 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 April, 2013.

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.

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 for purposes of the MA and/or SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is 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 July 25, 2013 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 February, 2016.



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

Date Signed: February 24, 2015

Date Mailed: February 24, 2015

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;

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- 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]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]