

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED], Deceased

Claimant

Reg. No.: 2007-27682;
2009-20200

Issue No.: 2009

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

May 29, 2008

Macomb County DHS (20)

ADMINISTRATIVE LAW JUDGE: Linda Steadley Schwarb

AMENDED HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on May 29, 2008. The claimant's estate was represented by [REDACTED] of [REDACTED]. Following the hearing, the record was kept open for receipt of additional medical evidence. Additional documents were received and reviewed.

ISSUE

Did the Department of Human Services (DHS or department) properly determine that claimant was not "disabled" for purposes of the Medical Assistance (MA-P) program?

FINDINGS OF FACT

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

- (1) On March 22, 2007, an application was filed on claimant's behalf for MA-P and State Disability Assistance (SDA) program benefits. The application requested MA-P retroactive to December 2006.
- (2) On May 7, 2007, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- (3) On July 31, 2007, a hearing request was filed to protest the department's determination.
- (4) On November 2, 2007, claimant passed away. Claimant's death certificate described the cause of death as gastrointestinal hemorrhage and colitis.
- (5) Claimant had a long history of alcohol abuse.
- (6) Claimant was hospitalized [REDACTED] through [REDACTED]. Her discharged diagnosis was duodenal ulcers.
- (7) Claimant was hospitalized [REDACTED] through [REDACTED] as a result of cellulitis with failed outpatient antibiotics of the left lower extremity. Secondary diagnosis included anemia, history of peptic ulcer disease, and hypothyroidism.
- (8) Claimant was hospitalized [REDACTED] through [REDACTED] for gait abnormality. Her discharge diagnosis included gait abnormality, protein malnutrition, liver cirrhosis, alcohol dependency, malaise and fatigue, hyperthyroidism, cardiac arrhythmia, idiopathic peripheral neuropathy, myelodysplastic syndrome, and anemia.
- (9) Claimant was hospitalized [REDACTED] through [REDACTED] with an admitting diagnosis of abnormality of gait. Her principal diagnosis upon discharge was hepatic coma. Secondary diagnosis included quadriplegia, unspecified; unspecified septicemia; and sepsis.

- (10) Claimant was hospitalized [REDACTED]. She expired on [REDACTED] with a discharged diagnosis of septic shock, multi-system organ failure, pseudomonal gram-negative bacteremia, defused colitis, and gastrointestinal bleeding. Claimant's death certificate listed cause of death as gastrointestinal hemorrhage and colitis.
- (11) Prior to her death, claimant suffered from alcoholic cirrhosis of the liver, hepatitis C, chronic pancreatitis, peripheral neuropathy, macrocytic anemia, essential hypertension, and alcohol- induced persistent dementia.
- (12) Following claimant's death, the department opened MA-P for November 2007, the month of claimant's death.
- (13) At the hearing, claimant's authorized representative waived any claim to SDA benefits.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Federal regulations require that the department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the 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 sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) 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, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this matter, the hearing record does not indicate claimant's work status from December 2006 through her death in November 2007. For purposes of this analyst, it will be assumed that claimant was not working.

Secondly, 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 mean 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. The *Higgs* court used the severity requirement as a “*de minimus* hurdle” in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

In this case, claimant’s representative has presented the required medical data and evidence necessary to support a finding that prior to claimant’s death, the claimant had significant limitations upon her ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling. Medical evidence has clearly established that claimant had an impairment (or combination of impairments) that had more than a minimal effect on claimant’s work activities. See Social Security Rulings 85-28, 88-13, and 82-63.

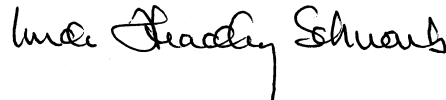
In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant’s impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Based upon the hearing record, the undersigned finds that claimant’s impairments met or equaled a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A, Section 5.05. Prior to her death, claimant suffered from alcoholic cirrhosis of the liver, hepatitis C, chronic pancreatitis, peripheral neuropathy, macrocytic anemia, essential hypertension, and alcohol-induced persistent dementia. It is the finding of this Administrative Law Judge, considering the many impairments from which claimant suffered, that claimant met or equaled a listed impairment. Accordingly, the undersigned finds that

claimant was disabled for purposes of the MA program from December 2006 through the time of her death in November 2007.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant met the definition of medically disabled under the Medical Assistance program as of December 2006.

Accordingly, the department is ordered to initiate a review of the March 22, 2007 application, if it has not already done so, to determine if all other non-medical eligibility criteria are met. The department shall inform claimant's authorized representative of its determination in writing.



Linda Steadley Schwarb
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 10/26/09

Date Mailed: 10/26/09

NOTICE: Administrative Hearings 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. Administrative hearings 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.

The Claimant may appeal the Decision and Order to the Circuit 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.

2007-27682/LSS

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cc:

