

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2008-13386

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 16, 2008

Monroe County DHS

ADMINISTRATIVE LAW JUDGE: Linda Steadley Schwarb

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 October 16, 2008. Claimant appeared and testified. Claimant was represented by [REDACTED]

[REDACTED] Following the hearing, the record was kept open for the 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 is 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 September 14, 2007, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to June of 2007.

(2) On November 9, 2007, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.

(3) On January 23, 2008, a hearing request was filed to protest the department's determination.

(4) Claimant, age 23, has a ninth grade education. Claimant received special education services while in school for the emotionally impaired and/or attention deficit hyperactivity disorder.

(5) Claimant last worked in approximately 2005 as a roofer. Claimant has also performed relevant work as a cashier, pizza delivery person, and installer of spray-on home insulation. Claimant's relevant work history consists exclusively of unskilled work activities.

(6) Claimant has a history of asthma, bipolar disorder with depression, low vision secondary to bilateral keratoconus, and recurrent episodes of unexplained syncope.

(7) Claimant has had numerous hospitalizations, both inpatient and emergency room treatment, for recurrent episodes of unexplained syncope. He has been diagnosed with conversion disorder with underlying bipolar disease, depression, and alcohol abuse.

(8) Claimant suffers from bilateral keratoconus which, without correction, results in vision of the bilateral eyes of 20/400. Claimant has been unable to afford the recommended treatment of specially fitted contact lenses or surgery for corneal transplants.

(9) Claimant's limited vision has lasted for 12 months or more.

#### 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 case, claimant is not working. Therefore, claimant may not be disqualified for MA at this step in the sequential evaluation process.

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 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 (6<sup>th</sup> 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 has presented the required medical data and evidence necessary to support a finding that he has significant limitations upon his ability to perform basic work activities due to limitations in his capacity for seeing. Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant’s work activities. See Social Security Rulings 85-28, 88-13, and 82-63.

It is well established that the severity and disabling nature of a condition must be evaluated without regard to remediability if the claimant has not means to pay for remedial

treatment. *McKnight v Sullivan*, 927 F2d 241 (6<sup>th</sup> Cir, 1990); *Loveace v Bowen*, 813 F2d 55 (5<sup>th</sup> Cir, 1987). Thus, when considering eligibility for MA-P, the department must first determine if claimant's condition is severe within the meaning of the federal regulation in the absence of treatment. If, without treatment, claimant is found to have a severe impairment, then the department must determine if there is an affordable treatment available to claimant that would prevent the disability from being a severe impairment for the required durational period under federal statute and regulation. See *McKnight* supra at 242. If claimant does not have access to affordable treatment, the department may not deny claimant's application under 20 CFR 416.909 based upon the belief that claimant would be expected to improve with treatment. In this case, claimant has extremely low vision secondary to keratoconus of the bilateral eyes. His treating ophthalmologist [REDACTED] reported on April 23, 2007 that claimant "cannot afford contact lenses and glasses give him migraines and he is unable to wear them—therefore legally blind without correction." On November 3, 2008, the treating eye doctor again reported that claimant is unable to wear glasses and cannot afford contact lenses. The eye doctor continued to report that, without correction, claimant's best vision in his bilateral eyes is 20/400. The hearing record fails to support the position that affordable treatment is available to claimant. Hence, since claimant is unable to afford medical treatment, claimant may not be eliminated for eligibility from MA based on the belief that he would not meet the requisite durational requirement and/or other eligibility criteria if he did have access to appropriate medical treatment.

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 the claimant's impairment meets or equals a listing. See Appendix 1 of Subpart P of

20 CFR, Part 404, Part A, Section 2.02. Claimant suffers from bilateral keratoconus. Without treatment, his vision in both eyes is 20/400. The record supports a finding that, due to lack of funds and/or insurance, claimant does not have access to appropriate treatment. Listing 2.02 dealing with impairment of visual acuity indicates that a person meets or equals a listing when remaining vision in the better eye with best correction is 20/200 or less. It is the finding of this Administrative Law Judge that claimant meets or equals Listing 2.02. Accordingly, the undersigned finds that claimant is presently disabled for purposes of the MA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant meets the definition of medically disabled under the Medical Assistance program as of June of 2007.

Accordingly, the department is ORDERED to initiate a review of the September 14, 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 and his authorized representative of its determination in writing. Assuming that claimant is otherwise eligible for program benefits, the department shall review claimant's continued eligibility for program benefits in October of 2009.

/s/ \_\_\_\_\_  
Linda Steadley Schwarb  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: 6/18/09

Date Mailed: 6/22/09

**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 Circuit Court 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.

LSS/pj

cc:

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