

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: 2008-20008

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 14, 2008

Wayne 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 August 14, 2008. Claimant appeared and testified. Claimant was represented by [REDACTED] of [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 April 30, 2007, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to January of 2007.

(2) On February 21, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.

(3) On May 6, 2008, a hearing request was filed to protest the department's determination.

(4) Claimant, age 47, has a 6<sup>th</sup> grade education. Claimant reports a history of special education services.

(5) Claimant has a history of asthma, bipolar disorder, low back pain, and bilateral knee pain.

(6) Claimant was hospitalized from December 20<sup>th</sup> of 2006 through January 2<sup>nd</sup> of 2007 for pneumonia and asthma.

(7) Claimant had an emergency room visit on April 10, 2007 for asthma exacerbation.

(8) Claimant visited the emergency room on March 11, 2007 as a result of an asthma exacerbation.

(9) On August 9, 2007, claimant visited an emergency room for asthma exacerbation.

(10) Claimant sought emergency room treatment on August 16, 2007 as a result of an asthma exacerbation.

(11) Claimant was hospitalized November 25<sup>th</sup> through November 29<sup>th</sup> of 2007 for asthma exacerbation.

(12) Claimant was re-hospitalized January 1<sup>st</sup> through January 8<sup>th</sup> of 2008 for asthma exacerbation.

(13) Claimant was hospitalized February 19<sup>th</sup> through February 23<sup>rd</sup> of 2008 for asthma exacerbation.

(14) Claimant was hospitalized March 7<sup>th</sup> through March 10<sup>th</sup> of 2008 for an asthma exacerbation.

(15) Claimant suffers from severe chronic asthma.

(16) Claimant has severe limitations upon his ability to walk, stand, lift, push, pull, climb, or tolerate exposures to fumes, chemicals, and dust.

(17) Claimant's limitations have 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 physical limitations upon his ability to perform basic work activities such as walking, standing, lifting, pushing, pulling, reaching, carrying, or handling. 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.

In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment is listed in Appendix 1 to Subpart P of 20 CFR, Part 404. Based upon the hearing record, the undersigned finds that claimant's impairment meets or equals a listed impairment. See Appendix 1 to Subpart P of 20 CFR, Part 404, Part A, Section 3.03. Claimant suffers from severe chronic asthma. As a result of his condition, claimant has required physician intervention at least once every two months or at least six times a year. Several of claimant's hospitalizations were longer than 24 hours. It is the finding of this Administrative Law Judge that claimant meets or equals a listing. 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 January of 2007.

Accordingly, the department is ORDERED to initiate a review of the April 30, 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 September of 2009.

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

Date Signed: 6/16/09

Date Mailed: 6/17/09

**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 mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

LSS/cv

cc:

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