

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: 2008-28707

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 18, 2009

Macomb 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 February 18, 2009. Claimant was represented by [REDACTED]

ISSUE

Was the claimant "disabled" for purposes of the Medical Assistance (MA-P) program from September of 2007 through November of 2007?

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 December 27, 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 September of 2007.

(2) On April 26, 2008, the department approved SDA benefits but denied MA-P benefits.

(3) On July 24, 2008, a hearing request was filed to protest the department's denial of claimant's request for MA-P benefits.

(4) Thereafter, based upon a subsequent application, the department opened MA-P for claimant effective December 1, 2007.

(5) At the hearing, the parties agreed that the issue in question is whether claimant met the disability criteria necessary for MA-P from September of 2007 through November of 2007.

(6) During the period in question, claimant suffered from multiple myeloma, bronchospastic chronic obstructive pulmonary disease, chronic back pain secondary to cervical spondylosis, and bilateral radiculopathy of the upper extremities.

(7) Claimant's complaints and allegations concerning impairments and limitations experienced from September of 2007 through November of 2007, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who was so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

#### 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 was not working from September of 2007 through November of 2007. Accordingly, claimant may not be disqualified for MA during that period 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, from September of 2007 through November of 2007, had 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 (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, during the period from September of 2007 through November of 2007, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings, that claimant was not capable of his past work as a mechanic during the period from September of 2007 through November of 2007. Claimant has presented the required medical data and evidence necessary to support a finding that he was not, at that point, capable of performing such work.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work.

20 CFR 416.920(f). This determination is based upon the claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once claimant reaches Step 5 in the sequential review process, claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6<sup>th</sup> Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that the claimant has the residual functional capacity for substantial gainful activity.

In this case, claimant was hospitalized in [REDACTED] for chronic obstructive pulmonary disease exacerbation and acute bronchitis. He was re-hospitalized in [REDACTED] again, for chronic obstructive pulmonary disease exacerbation and acute bronchitis. Claimant was diagnosed on November 28, 2007 with bronchospastic chronic obstructive pulmonary disease. In December of 2007, an MRI of the lumbar spine documented cervical spondylosis with left foraminal stenosis at C3 to C4 and foraminal stenosis at C4-C5. Claimant was found to be experiencing chronic back pain with bilateral radiculopathy of the upper extremities. In March of 2008, claimant was diagnosed with multiple myeloma. A CT scan of the cervical spine documented multiple lytic lesions involving the cervical spine from C2 through C7. The medical record supports a finding that from September of 2007 through November of 2007, claimant was “disabled” and incapable of any substantial gainful activity. Accordingly, the department’s determination in this matter must be reversed.

#### 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 from September of 2007 through November of 2007. Accordingly, the department’s determination in this matter must be REVERSED.

The department is ORDERED to initiate a review of the December 27, 2007 application, if it has not already done so, to determine if all other non-medical eligibility criteria were met

during the period in question. The department shall inform claimant and his authorized representative of its determination in writing.

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

Date Signed: 6/2/09

Date Mailed: 6/5/09

**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:

