

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: 2008-6725
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 11, 2009
OaklandCounty 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 11, 2009. Claimant appeared and testified. Claimant was represented by [REDACTED].

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 May 3, 2007, an application was filed on claimant's behalf for MA-P benefits.

The application requested MA-P retroactive to February of 2007.

(2) On July 17, 2007, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.

(3) On September 14, 2007, a hearing request was filed to protest the department's determination.

(4) At the hearing, the parties agreed that the issue in question was whether or not claimant was "disabled" from [REDACTED] through [REDACTED].

(5) Claimant, age 66, has an Associate's Degree in General Education.

(5) Claimant last performed relevant work in approximately 2004 as a receptionist. Claimant has also performed relevant work as an accounts payable clerk.

(6) Claimant was hospitalized from [REDACTED] through [REDACTED]. Claimant underwent implantation of an automatic implanted cardiac defibrillator. Her discharge diagnosis was non-ST myocardial infarction, congestive heart failure with severe left ventricular dysfunction, status-post mitral valve replacement, non-sustained ventricular tachycardia, acute renal failure, hyponatremia, hypertension, pneumonia, asthma, and abnormal liver function--resolved.

(7) On [REDACTED], claimant's treating cardiologist [REDACTED] opined that claimant had a New York Heart Classification functional capacity of [REDACTED]. [Patients with cardiac disease resulting in marked limitation of physical activity. They are comfortable at rest. Less than ordinary activity causes fatigue, palpitation, dyspnea or anginal pain.] The treating cardiologist found claimant to be a Class D therapeutic classification. [Patients with cardiac disease whose ordinary physical activity should be markedly restricted.]

(8) From [REDACTED] through [REDACTED], claimant had severe limitations with regard to her ability to walk, stand, lift, carry, or handle. Claimant's limitations have lasted 12 months or more.

(9) During the period from [REDACTED] through [REDACTED], claimant's complaints and allegations concerning her impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflected 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, at all times relevant, claimant was 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 (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 has presented the required medical data and evidence necessary to support a finding that, during the period in questions, claimant had significant physical and mental limitations upon her ability to perform basic work activities such as walking, standing, lifting, pushing, pulling, reaching, carrying, or handling. Medical evidence has clearly established that claimant at all times relevant had 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 to 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 to Subpart P of 20 CFR, Part 404, Part A. Accordingly, 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 that, at all times relevant, the claimant’s impairment(s) prevents her 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, at all times relevant to this matter, claimant was not capable of her past work. Claimant has presented the required medical data and evidence necessary to support a finding that she, during the period in question, was not capable of performing past work activities.

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 you 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 (6th 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 matter, claimant was hospitalized [REDACTED] for a myocardial infarction. She underwent implantation of an automatic implanted cardiac defibrillator. Her discharge diagnosis was non-ST myocardial infarction, congestive heart failure with severe left ventricular dysfunction, status post mitral valve replacement, non-sustained ventricular tachycardia, acute renal failure, hyponatremia, hypertension, pneumonia, asthma, and abnormal liver function--resolved. On [REDACTED], claimant's treating cardiologist [REDACTED] gave claimant a Class III functional capacity and a Class D therapeutic classification on the New York Heart Classification. The record supports a finding that from [REDACTED] through [REDACTED] of [REDACTED], claimant was not capable of 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 from [REDACTED] through [REDACTED], claimant met the definition of medically disabled under the Medical Assistance program.

Accordingly, the department is ORDERED to initiate a review of the May 3, 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 her authorized representative of its determination in writing.

/s/

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

Date Signed: 4/21/09

Date Mailed: 4/21/09

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: [REDACTED]