

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.: 2008-17606
Issue No.: 2009; 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
July 9, 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 July 9, 2008. The claimant appeared and testified. The claimant was represented by [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) and State Disability Assistance (SDA) programs?

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 28, 2007, an application was filed on claimant's behalf for MA-P and SDA benefits. The application requested MA-P retroactive to December 2006.

- 2) On November 1, 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 29, 2008, a hearing request was filed to protest the department's determination.
- 4) Claimant, age [REDACTED], has an 11th grade education.
- 5) Claimant last worked as a fast food worker in [REDACTED]. Claimant has no other relevant work experience. Claimant's work history consists exclusively of unskilled activities.
- 6) Claimant has a history of sickle cell anemia.
- 7) Claimant was hospitalized [REDACTED] for sickle cell disease with crisis as well pneumonia and Hemoglobin SC disease.
- 8) Claimant was hospitalized [REDACTED] for sickle cell crisis.
- 9) Claimant was re-hospitalized [REDACTED] for sickle cell crisis.
- 10) Claimant was hospitalized [REDACTED] for sickle cell crisis.
- 11) Claimant suffers from sickle cell anemia with chronic pain of the joints, stomach area, back, and chest; Hemoglobin SC disease; medullary sclerosis of the femur secondary to sickle cell disease; chronic low back pain due to sclerotic changes secondary to sickle cell disease; major depressive disorder, chronic, severe; generalized anxiety disorder; pain disorder associated with psychological factors and general medical conditions; and stress exacerbating physical conditions.
Claimant's GAF score in December 2008 was 45.
- 12) Claimant complains of chronic pain in his joints, stomach, back, and chest as well as chronic fatigue, low energy, frequent infections, and depression.

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 from 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 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 has presented the required medical data and evidence necessary to support a finding that claimant has significant physical and mental limitations upon his ability to perform basic work activities such as walking, standing, lifting, and carrying as well as difficulties responding appropriately to supervision, co-workers, and usual work situations; use of judgment; understanding, carrying out, and remembering simple instructions; and dealing with

changes in a routine work setting. 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, 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 is not capable of the walking, standing, lifting, and personal interaction required by his past employment. Claimant has presented the required medical data and evidence necessary to support a finding that he is not, at this 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 (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 has a life long history of sickle cell anemia. More recently, he was hospitalized in [REDACTED] for a sickle cell crisis. He was diagnosed with sickle cell vaso-occlusive crisis. An x-ray of claimant's right hip and femur on [REDACTED] demonstrated medullary sclerosis of the femur secondary to sickle cell disease. X-rays also documented degenerative changes of the lumbar spine with areas of sclerosis secondary to sickle cell disease. Hemoglobin Electrophoresis demonstrated Hemoglobin SC disease. Claimant was re-hospitalized for sickle cell crisis on [REDACTED]. He was again hospitalized for sickle cell crisis on [REDACTED] and again on [REDACTED]. Claimant complains of chronic pain in his joints, stomach area, back and chest as well as being easily fatigued with low energy level, frequent infections, and depression. Claimant was seen by a consulting physician for the Disability Determination Service on [REDACTED]. The consulting provided the following impression:

1. **SICKLE CELL ANEMIA:** The examinee has a history of sickle cell anemia. He has been admitted on numerous occasions. He is taking hydrocodone for pain. The examinee does have chronic pain on a daily basis. He has been admitted on multiple occasions for this problem. The examinee states that he has also been transfused and admitted with pneumonia and has had nausea and vomiting as well.

2. LEFT EYE INJURY: The examinee has a history of a left eye injury with contact and a chemical burn to the left eye. He is currently using eye-drops for that problem.

Claimant was seen by a consulting psychologist for the department on [REDACTED]. The consulting provided the following diagnosis: major depressive disorder, chronic, severe; generalized anxiety disorder; pain disorder associated with psychological factors and general medical conditions; and stress exacerbating physical conditions and vice-versa. The consulting gave claimant a current GAF score of 45. The consulting found claimant to be markedly limited with regard to the ability to understand and remember detailed instructions; the ability to carryout detailed instructions; the ability to maintain attention and concentration for extended periods; the ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; the ability to work in coordination with or proximity to others without being distracted by them; the ability to complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest; the ability to accept instructions and respond appropriately to criticism from supervisors; the ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes; and the ability to set realistic goals or make plans independently of others. The consultant found claimant to be moderately limited with regard to his ability to remember locations and work like procedures; the ability to sustain an ordinary routine without supervision; the ability to interact appropriately with the general public; and the ability to respond appropriately to change in the work setting.

After careful review of claimant's extensive medical record and the Administrative Law Judge's personal interaction with claimant at the hearing, this Administrative Law Judge finds that claimant's exertional and non-exertional impairments render claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404,

Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The department has failed to provide vocational evidence which establishes that claimant has the residual functional capacity for substantial gainful activity and that, given claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which the claimant could perform despite claimant's limitations. Accordingly, this Administrative Law Judge concludes that claimant is disabled for purposes of the MA program.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM Item 261. In as much as claimant has been found "disabled" for purposes of MA, he must also be found "disabled" for purposes of the SDA 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 and State Disability Assistance program as of December 2006.

Accordingly, the department is ordered to initiate a review of the March 28, 2007 application, if it is 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 May 2010.

/s/

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

Date Signed: 07/28/09

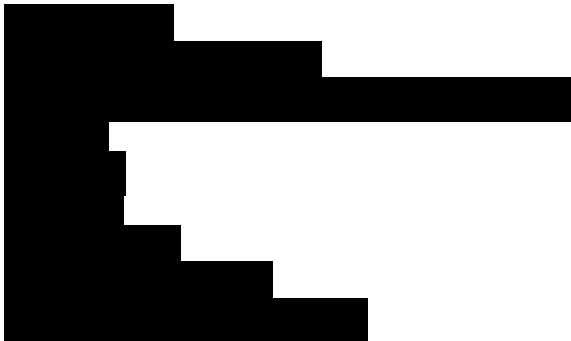
Date Mailed: 07/30/09

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 receipt date of the rehearing decision.

LSS/dj

cc:

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