

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: 2008-21459

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 29, 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 October 29, 2008. Claimant appeared and testified. Claimant was represented by [REDACTED]

[REDACTED] Following the hearing, the record was kept open for 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 January 3, 2008, an application was filed on claimant's behalf for MA-P and SDA benefits. The application requested MA-P retroactive to October of 2007.

(2) On February 20, 2008, the department denied claimant's application 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 57, has a high school education.

(5) Claimant last worked in 2002 as a factory worker. Claimant has also performed relevant work as a carpenter. Claimant's relevant work history consists exclusively of unskilled work activities.

(6) Claimant has a history of asthma-chronic obstructive pulmonary disease and nicotine dependence.

(7) Claimant was treated in an emergency room on [REDACTED] as a result of chronic obstructive pulmonary disease acute exacerbation.

(8) Claimant was hospitalized [REDACTED] through [REDACTED] for chronic obstructive pulmonary disease acute exacerbation.

(9) Claimant was hospitalized [REDACTED] through [REDACTED] for treatment of chronic obstructive pulmonary disease exacerbation.

(10) Claimant was hospitalized [REDACTED] through [REDACTED] for chronic obstructive asthma.

(11) Claimant was hospitalized [REDACTED] through [REDACTED] for acute respiratory failure secondary to chronic obstructive bronchitis with acute exacerbation.

(12) Claimant suffers from chronic obstructive pulmonary disease, gastroesophageal reflux disease, and hyperlipidemia.

(13) Claimant has severe limitations upon his ability to walk, stand, lift, carry, and handle. Claimant's limitations have lasted for 12 months or more.

(14) Claimant is and has been a recipient of medical services and prescriptions from the Veteran's Administration and is reportedly compliant with prescribed treatment.

### 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 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 (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 claimant has significant physical and mental 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 of Subpart P of 20 CFR, 404. Based upon the hearing record, the undersigned finds that claimant’s impairment meets or equals a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A, Section 3.03. Claimant has a long history of asthma-chronic pulmonary disease. Despite prescribed treatment claimant has required physician intervention at least six times a year. It is noted that on several occasions he required in-patient hospitalization for longer than 24 hours in order to control his respiratory distress. It is the finding of this Administrative Law Judge that claimant meets or equals a listing. Accordingly, the undersigned must find 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 programs as of October of 2007.

Accordingly, the department is ORDERED to initiate a review of the January 3, 2008 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 April of 2010.

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

Date Signed: 6/2/09

Date Mailed: 6/4/09

**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/at

cc:

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