

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: 2008-2211

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 20, 2008

Calhoun 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 20, 2008. Claimant appeared and testified. 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) 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 July 19, 2007, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to May of 2007.

(2) On August 9, 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 27, 2007, a hearing request was filed to protest the department's determination.

(4) Claimant, age 37, has a high school education.

(5) Claimant last worked in 2001 as a counselor at [REDACTED]. Claimant has also performed relevant work as a warehouse worker and landscape employee. Claimant's relevant work history consists exclusively of unskilled work activities.

(6) Claimant was hospitalized May 2 – May 10, 2007 as a result of intractable back pain. An MRI documented a 3 cm mass deforming the conus medullaris and the cauda equina at the T12-L1 level. A 1 cm mass was seen further along the cauda equina at the L4 level. On May 7, 2007, claimant underwent a T12/L1 laminectomy for resection of the intradural tumor.

(7) Claimant was rehospitalized [REDACTED] for perforated sigmoid diverticulitis. On May 24, 2007, he underwent a sigmoidectomy with colostomy.

(8) Claimant was hospitalized [REDACTED] for a colostomy takedown. Unfortunately, he also underwent a diverting ileostomy for anastomotic leak after the colostomy takedown.

(9) Claimant was rehospitalized [REDACTED] for the ileostomy takedown with resection.

(10) From May of 2007 through May of 2008, claimant was unable to sustain substantial gainful employment.

(11) Thereafter, claimant was capable of at least sedentary work activities 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 general, claimant has the responsibility to prove that he is disabled.

Claimant’s impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant’s statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration

of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

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 employed. Accordingly, claimant may not be eliminated 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 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, from May of 2007 through May of 2008, claimant had significant physical limitations upon his ability to perform basic work activities such as walking and standing for long periods of time and lifting heavy objects. 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, or heavy lifting required by his past employment. Claimant has presented the required medical evidence necessary to support a determination 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).

In this case, the record supports a finding that, from May of 2007 through May of 2008, claimant was unable to participate in substantial gainful activity. As a result of intractable back pain, claimant was hospitalized [REDACTED]. An intradural tumor was detected on his spinal cord and, on May 7, 2007, claimant underwent a T5/L1 laminectomy for resection of the tumor. Unfortunately, claimant was rehospitized [REDACTED] as a result of perforated sigmoid diverticulitis. He underwent a sigmoidectomy with end colostomy. He was rehospitized [REDACTED] for the colostomy takedown. It became necessary to undergo a diverting ileostomy as a result of an anastamotic leak after the colostomy takedown. That required further hospitalization on [REDACTED] for the ileostomy

takedown with resection. The record clearly supports a finding that from May of 2007 through May of 2008, claimant was recovering from his multiple surgical procedures and not capable of substantial gainful activity. The record indicates that claimant has had no other further hospitalizations since his discharge on January 7, 2008. Claimant was seen by a consulting internist for the department on December 23, 2008. The consultant provided the following summary:

“This is a 36-year-old pleasant gentleman with complaints of back pain, headaches, and stomach aches. His physical exam was only positive for some mild impairment in range of motion about his left leg and decreased sensation to pinprick and crude touch over the lateral aspect of the lower leg and absent deep tendon reflexes in the left patella and a deep tendon reflex of +1 in his right patella, along with some scars from previous surgery. He appeared comfortable and relaxed throughout his exam.

He did not appear in any distress whatsoever. He was able to dress and undress himself without any difficulty. He was able to get on and off the examining table without any difficulty. His speech and conversation appeared to be normal. He did not show any outward signs or symptoms of being in any pain.

His girlfriend was with him and she kept correcting him telling me that his problems were much greater than what he was telling me. At several times I had to ask her to stop talking for the patient because he was clearly able to answer the questions on his own. Whatever problem he reported his girlfriend reported that the problem was much worse and that [REDACTED] was underestimating his problems.

He is a former counselor at a local boy's school for kids who have emotional or behavioral problems and he does not feel comfortable working in that environment because apparently he is expected to be able to physically confront students. His motor strength is normal and he had no problems with coordination or balance.”

The consultant opined that claimant had no physical limitations and was capable of frequently lifting 20 pounds and occasionally lifting up to 25 pounds. The consultant indicated that claimant was capable of standing or walking about six hours in an eight-hour workday and

capable of repetitive activities with the upper and lower extremities. Following his last surgery in January of 2008, it is estimated that claimant was capable of at least sedentary work activities as of June of 2008. The record is devoid of any medical evidence to support a contrary conclusion. Considering that claimant, at age 36, is a younger individual, has a high school education, has an unskilled work history, and has, at the very least, the capacity for sedentary work activities as of June of 2008, this Administrative Law Judge finds that claimant's impairments did not prevent him from doing other work as of June of 2008. As a guide, see 20 CFR, Part 404, Subpart P, Appendix 2, Table 1, Rule 201.27. Accordingly, this Administrative Law Judge finds that claimant was medically disabled for purposes of MA from May of 2007 through May of 2008. Thereafter, claimant was capable of at least sedentary work activities and thus no longer medically disabled for purposes of MA.

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 May of 2007 through May of 2008.

Accordingly, the department is ORDERED to initiate a review of the July 19, 2007 application, if it has not already done so, to determine if all other non-medical eligibility were met during that time period. The department shall inform the claimant and his authorized representative of the determination in writing.

Accordingly, the department is REVERSED in part and AFFIRMED in part.

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

Date Signed: 6/18/09

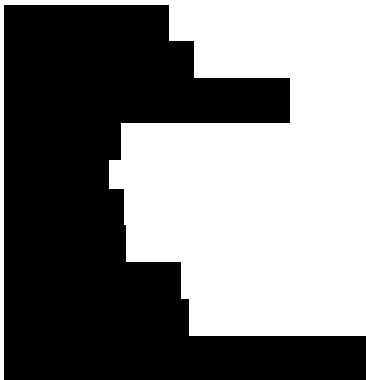
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**NOTICE:** Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or 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/pj

cc:

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