

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.: 2008-28953
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
December 17, 2008
Wayne County DHS (49)

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 December 17, 2008. Claimant appeared and testified. Claimant was represented by [REDACTED] of [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 February 26, 2008, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to December of 2007.

- 2) On July 28, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On August 4, 2008, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 50, has a Bachelor's Degree in Health and Physical Education.
- 5) Claimant last worked in December of 2007 as a maintenance person at a car dealership. Claimant has also performed relevant work as a machine operator. Claimant's relevant work history consists exclusively of unskilled work activities.
- 6) Claimant was hospitalized [REDACTED] following complaints of a very severe headache. A CT scan documented a subarachnoid hemorrhage with intracranial aneurysm. Claimant underwent endovascular coil embolization.
- 7) Claimant currently suffers from hypertension; chronic, severe headaches; and cognitive disorder (full scale IQ of 64).
- 8) Claimant has a demonstrated loss of cognitive abilities with medically documented persistence of memory impairment which has resulted in marked restrictions of activities of daily living and marked difficulties maintaining concentration, persistence, and pace.

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 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 (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.

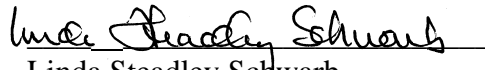
In this case, claimant has presented the required medical data and evidence necessary to support a finding that he has significant mental limitations upon his ability to engage in basic work activities such as understanding, carrying out, and remembering simple instructions; use of judgment; responding appropriately to supervision, co-workers, and usual work situations; 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 is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Based upon claimant's diagnosis as stated above, 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 12.02. Claimant was hospitalized in [REDACTED] and was discovered to have a subarachnoid hemorrhage with intracranial aneurysm. He underwent endovascular coil embolization. Following his hospitalization, claimant was noted to have significant memory deficits. During a follow-up visit with his treating neurosurgeon on [REDACTED] claimant's short-term memory was found to be problematic. Claimant was seen by a consulting psychologist for the department on [REDACTED]. Following evaluation and testing, the psychologist opined that claimant demonstrated a performance IQ of 64 and a full-scale IQ of 64. The psychologist diagnosed claimant with cognitive disorder, presumably secondary to reported aneurysm. The consultant made the following comments: "The prognosis is guarded in light of the patient's cognitive difficulties, in light of difficulties with calculations he would not be felt capable of managing his own benefit funds." The hearing record supports a finding that claimant has suffered a loss of cognitive abilities. Claimant earned a Bachelor's Degree but, upon testing in [REDACTED], demonstrated a full-scale IQ of 64. Claimant's loss of cognitive abilities is seen through the medically documented persistence of memory impairment. This has resulted in marked restrictions of activities of daily living as well as marked difficulties in maintaining concentration, persistence, and pace. Accordingly, the undersigned finds that claimant is presently disabled for purposes of the MA 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 program as of December of 2007.

Accordingly, the department is ordered to initiate a review of the February 26, 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 January of 2011.


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

Date Signed: February 9, 2010

Date Mailed: February 12, 2010

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.

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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/pf

cc:

