

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: 2008-30739
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 8, 2008
Wayne County DHS (76)

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 8, 2008. Claimant appeared and testified. Claimant was represented by [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) 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 March 21, 2008, an application was filed on claimant's behalf for MA-P benefits. The application did not request retroactive medical coverage.

- (2) On May 19, 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 15, 2008, a hearing request was filed to protest the department's determination.
- (4) Claimant, age 28, is a high school graduate.
- (5) Claimant last worked in 2007 as a machine operator/inspector. Claimant has also performed relevant work as a fast food cook, mover, roofer, and general laborer. Claimant's relevant work history consists exclusively of unskilled work activities.
- (6) Claimant was hospitalized on [REDACTED] with complaints of significant shortness of breath. He was diagnosed with acute right leg ischemia and underwent an angiography and placement of an inferior vena cava filter. He also underwent bilateral lower extremity arterial embolectomies which were performed with fasciotomies. He was taken back to the operating room several times in an attempt to gradually close his right anterolateral fasciotomy site as well as his left medial calf fasciotomy site. He was identified as having a patent foramen ovale and underwent percutaneous closure of his patent foramen ovale and then underwent a catheter-directed thrombolysis for the pulmonary embolus.
- (7) Claimant was re-hospitalized [REDACTED] with complaints of shortness of breath. He was diagnosed with recurrent bilateral pulmonary emboli and right peroneal deep vein thrombosis.
- (8) A CT angiography of the chest on [REDACTED] was positive for bilateral pulmonary emboli. An echocardiogram on [REDACTED] revealed moderate to

severe right ventricle dysfunction. A venous ultrasound of the lower extremity on

██████████ identified acute deep vein thrombosis within the right peroneal vein.

- (9) Claimant suffers from recurrent deep vein thrombosis of the lower right extremity; recurrent bilateral pulmonary embolism; moderate to severe dysfunction of the right ventricle; severe pulmonary hypertension with moderate respiratory distress upon minimal activity; and complaints of depression.
- (10) Claimant has severe limitations upon his ability to walk, stand, sit, lift, carry, and handle. Claimant's limitations have last or are expected to last 12 months or more.
- (11) Claimant's complaints and allegations concerning his impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who is 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, 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 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 claimant has significant limitations upon claimant’s ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, 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 (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, sitting, lifting, or carrying 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 case, claimant was hospitalized [REDACTED] through [REDACTED] for acute lower extremity arterial ischemia with pulmonary embolism and patent foramen ovale. In response to acute right leg ischemia, he underwent angiography and placement of inferior vena cava filter.

To address bilateral lower extremity ischemia, he underwent bilateral lower extremity arterial embolectomies performed with fasciotomies. He was required to be returned to the operating room on several occasions in an attempt gradually close his right anterolateral fasciotomy site as well as his left medial calf fasciotomy site. He also underwent percutaneous closure of his patent foramen ovale as well as catheter-directed thrombolysis for pulmonary embolus. Claimant was re-hospitalized [REDACTED] through [REDACTED] with complaints of shortness of breath. He was diagnosed with recurrent right deep venous thrombosis and bilateral pulmonary embolism. On [REDACTED], a CT angiography of the chest documented bilateral pulmonary emboli. An echocardiogram on [REDACTED] revealed moderate to severe dysfunction of the right ventricle. A venous ultrasound of the right lower extremity on [REDACTED] revealed acute deep venous thrombosis within the right peroneal vein. On [REDACTED], claimant's treating internist [REDACTED] diagnosed claimant with recurrent pulmonary embolism, recurrent acute deep venous thrombosis; severe pulmonary hypertension secondary to recurrent pulmonary embolism, and moderate respiratory distress with minimal activity. The physician indicated that claimant was limited to occasionally lifting less than 10 lbs and sitting less than 6 hours in an 8 hour work day. The treating physician indicated that claimant was incapable of pushing/pulling with the bilateral upper extremities. At the hearing, claimant testified quite credibly as to problems with shortness of breath upon very mild exertion as well as pain and swelling of the bilateral legs, especially the right and his need to periodically elevate his right leg throughout the day. Claimant reported feeling quite depressed about his physical condition.

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.

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 March 2008.

Accordingly, the department is ordered to initiate a review of the March 21, 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 October 2009.

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

Date Signed: 06/09/09

Date Mailed: 06/09/09

heading

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/jlg

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