

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: 2008-6220
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 11, 2008
Wayne County DHS (82)

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 June 11, 2009. 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.

ISSUES

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 June 28, 2007, an application was filed on claimant's behalf for MA-P and SDA benefits. The application requested MA-P retroactive to March 2007.
- (2) On July 16, 2007, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- (3) On October 11, 2007, a hearing request was filed to protest the department's determination.
- (4) Claimant, age 50, has a high school education.
- (5) Claimant last worked in 2003 as a hi-lo drive. Claimant has also worked as the owner/operator of a car wash.
- (6) Claimant has a history of substance abuse, gout, low back pain secondary to a motor vehicle accident, and symptomatic bradycardia with pace maker placement in 2003.
- (7) Claimant was hospitalized [REDACTED] through [REDACTED] of 2007 as a result of chest pain.
- (8) Claimant was hospitalized [REDACTED] through [REDACTED] of 2007 with chest pain. His discharged diagnosis was chest pain secondary to paroxysmal supraventricular tachycardia, gouty arthropathy, and status post cardiac pace maker in situ.
- (9) Claimant was hospitalized [REDACTED] through [REDACTED] of 2007 for syncope and collapse. His discharged diagnosis was syncope and collapse, opioid type dependence, status post cardiac pace maker in situ, gouty arthropathy, and hemiplegia and hemiparesis.
- (10) Claimant was hospitalized [REDACTED] through [REDACTED] of 2007 as a result of syncopal episodes. His discharged diagnosis was syncope, history of permanent pace maker placement, hypertension, gout, and history of rheumatoid arthritis.
- (11) Claimant was hospitalized [REDACTED] through [REDACTED] of 2008 for chest pain. He had a positive urine drug screen for cocaine.

- (12) Claimant was hospitalized [REDACTED] through [REDACTED] of 2008 as a result of acute coronary syndrome, gout, and hypertension.
- (13) Claimant was hospitalized [REDACTED] through [REDACTED] of 2008. An x-ray of the left shoulder on [REDACTED] documented degenerative changes of the acromioclavicular joint with chronic rotator cuff injury. Heart cautherization was performed on [REDACTED], [REDACTED] and he was diagnosed with new onset coronary artery disease. His discharged diagnosis was syncope, chest pain, and gout.
- (14) Claimant was hospitalized [REDACTED] through [REDACTED] of 2008. His discharged diagnosis was syncopal event and anemia.
- (15) Claimant was hospitalized [REDACTED] through [REDACTED] of 2008 as a result of chest pain and syncope. His discharge diagnosis was vasovagal syncope, chest pain, anemia, hyperlipidemia, and gout.
- (16) Claimant was hospitalized [REDACTED] through [REDACTED] of 2009 for chest pain, syncope, gout, arthritis, and debility.
- (17) Claimant reports problems with his gait, fatigue, depression, shortness of breath, dizziness, joint pain, and recurrent episodes of syncope.
- (18) Claimant currently suffers from coronary artery disease, acute coronary syndrome with chronic chest pain, gout, hypertension, recurrent vasovagal syncope, degenerative changes of the left acromioclavicular joint with chronic rotator cuff injury, anemia, hyperlipidemia, and debility.
- (19) Claimant has severe limitations upon his ability to walk, stand, and lift. Claimants limitations have lasted or expected to last 12 months or more.

- (20) Claimant has resided in an Adult Foster Care facility since 2003. He is said to require 24 hour ADL supervision because frequent falls and frequent episodes of syncope.
- (21) 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 physical and mental limitations upon claimant’s ability to perform basic work activities such as walking, standing, 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 (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Based upon the claimant’s extensive medical record, the undersigned finds that claimant impairments meet or equal a listed impairment. Appendix 1 of Subpart P of 20 CFR, Part 404, Part A, Section 4.05. The medical record suggests that claimant suffers from recurrent syncope and/or vasovagal syncope. The record supports the finding that, the combined affect of all claimant’s impairments meet or equal the impact of a listing. Accordingly, the undersigned finds 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 SDA benefits.

The Medical Social Work Consultant (MSWC), in conjunction with the Medical Review Team (MRT), is to consider the appropriateness of directing claimant to participate in appropriate mental health and/or substance abuse treatment as a condition of receipt of benefits.

Unless the MSWC determines that claimant has good cause for failure to participate in mandatory treatment, claimant will lose eligibility for [MA-P, PEM 260, p. 5 / SDA, PEM, Item 261, pp. 3 and 4].

Further, a referral is to be made to Adult Protective Services for an evaluation of possible financial management problems. Specifically, before SDA benefits may be paid to claimant, Adult Protective Services is to assess the appropriateness of a payee or conservatorship for claimant because of mental health and/or substance abuse or other problems which may prevent adequate management or discharge of financial or other personal affairs. See Adult Services Manual, Item 383.

DECISION AND ORDER

2008-6220/LSS

LSS/jlg

cc:

