

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2009-10064
2009-11727

Issue No.: 2009

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:
March 19, 2009
Macomb County DHS (20)

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 March 19, 2009. The Personal Representative of the Estate was represented by authorized representative [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 was 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 August 31, 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 October 30, 2007, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On January 24, 2008, a hearing request was filed to protest the department's determination.
- 4) On May 9, 2008, a second application for MA-P was filed. This application requested MA-P retroactive to February of 2008.
- 5) On August 15, 2008, the department again denied the application based upon the belief that claimant did not meet the requisite disability criteria.
- 6) On November 10, 2008, a hearing request was filed to protest the department's determination.
- 7) Claimant was born on [REDACTED].
- 8) Claimant had a history of coronary artery disease with myocardial infarction and multiple stent placement as well as chronic obstructive pulmonary disease, diabetes mellitus, sarcodosis, hyperlipidemia, and hypertension.
- 9) Claimant was hospitalized [REDACTED] with complaints of chest pain. His discharge diagnosis was chest pain, likely musculoskeletal in origin, coronary artery disease status post multiple percutaneous interventions; hypertension; hyperlipidemia; diabetes mellitus Type II; history of alcohol abuse; history of sarcodosis; and history of substance abuse.
- 10) Claimant was hospitalized [REDACTED] following complaints of chest pain. He underwent left heart catheterization and was given a

discharge diagnosis of chest pain, status post motor vehicle accident; asthma; coronary artery disease, myocardial infarction in [REDACTED]; diabetes; asthma; hyperlipidemia; and sarcodosis.

- 11) Claimant had an emergency room treatment on [REDACTED], as a result of chronic lower extremity leg pain.
- 12) Claimant was hospitalized [REDACTED]. His discharge diagnosis was atypical chest pain; diabetes; hypertension; hyperlipidemia; asthma; history of sarcodosis; chronic pain; and peripheral neuropathy.
- 13) Claimant was re-hospitalized [REDACTED]. His discharge diagnosis was unstable angina secondary to coronary artery disease; gastroesophageal reflux disease; diabetes mellitus; hypertension; hyperlipidemia; arthrodesis; and chronic obstructive pulmonary disease.
- 14) Claimant was hospitalized [REDACTED] following complaints of chest pain. He was discharged with a diagnosis of acute unstable angina; history of atherosclerotic coronary occlusive disease with history of multiple percutaneous coronary interventions with stent placement multiple times; diabetes mellitus; history of sarcodosis; and hypertension.
- 15) Claimant was hospitalized [REDACTED]. His discharge diagnosis was acute bronchitis, coronary artery disease, asthma, diabetes mellitus, hypertension, sarcodosis, and neuropathy.
- 16) Claimant was hospitalized [REDACTED] as a result of chest pain. His discharge diagnosis was atypical chest pain, full work-up done with

unknown reason for the chest pain most likely secondary to anxiety and/or component of gastroesophageal reflux disease symptom; history of coronary artery disease status post stent; diabetes; and history of sarcodosis on steroid maintenance treatment.

- 17) Claimant was hospitalized [REDACTED] as a result of chest pain. His discharge diagnosis was coronary artery disease, status post stent; diabetes mellitus Type II uncontrolled; hypertension; history of sarcodosis; chronic pain syndrome; and status post motor vehicle accident.
- 18) Claimant was hospitalized [REDACTED] as a result of chest pain. He underwent left heart catheterization. His discharge diagnosis was chest pain; hemoptysis; coronary artery disease with multiple stents; diabetes; asthma; sarcodosis; chronic pain; status post car accident; hypertension; asthma; and dyslipidemia.
- 19) Claimant was hospitalized [REDACTED], following complaints of severe depression, insomnia, loss of appetite, loss of weight, feelings of hopelessness and suicidal ideation. He was evaluated and found to suffer from major depressive disorder, recurrent; rule out bipolar disorder. His GAF score was 20.
- 20) On [REDACTED], claimant passed away. Cause of death was found to be accidental methadone intoxication. Contributing conditions were ischemic heart disease and fatty liver disease.
- 21) From [REDACTED] through the time of his death in [REDACTED], claimant suffered from coronary artery disease with history of myocardial infarction and

approximately thirteen stent placements; unstable angina; hyperlipidemia; hypertension; chronic obstructive pulmonary disease; diabetes mellitus; sarcoidosis; chronic pain syndrome secondary to peripheral diabetic neuropathy of the bilateral lower extremities; depression secondary to general medical condition; and personality disorder, NOS.

- 22) During the time period in question, claimant suffered from severe limitations with regard to his ability to walk, stand, sit, lift, push, pull, reach, carry, and handle as well as limitations with regard to responding appropriately to others and dealing with changes in a routine work setting. Claimant's limitations lasted for twelve months or more.
- 23) During the period from [REDACTED] through [REDACTED], 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, reflected an individual who was 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, during the time period in question, claimant was 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, the hearing record presents the required medical data and evidence necessary to support a finding that claimant had significant physical and mental limitations upon his ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; 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 from [REDACTED] through the time of his death in [REDACTED] [REDACTED] had a severe impairment (or combination of impairments) that had more than a minimal effect upon claimant’s ability to perform basic 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 was not capable of any past relevant work activities. The hearing record presents the required medical data and evidence necessary to support a finding that claimant was not, during the time period in question, capable of performing such work activities.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevented him 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 you 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 reached Step 5 in the sequential review process, claimant had 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 was on the state to prove by substantial evidence that the claimant had the residual functional capacity for substantial gainful activity.

In this case, the record indicates that claimant had multiple hospitalizations during the time period in question. The medical records suggest that claimant had ongoing problems with coronary artery disease and had thirteen stent placements. Claimant continued to suffer with unstable angina. A psychiatric evaluation on [REDACTED] resulted in a finding of depressions secondary to general medical condition; rule out somatoform pain in conjunction with somatic pain as well as personality disorder, not otherwise specified. A psychiatric evaluation performed during his [REDACTED] hospitalization resulted in a diagnosis of major depressive disorder, recurrent rule out bipolar disorder. At the time of evaluation, claimant had a GAF score of 20. Claimant was seen by a consulting internist for the department on [REDACTED]. The consultant diagnosed claimant with coronary artery disease, status post stent placement; bronchial asthma; diabetes Type II; and peripheral neuropathy. Claimant was seen by a pain consultant on [REDACTED]. The consultant diagnosed him with chronic pain syndrome secondary to diabetic peripheral neuropathy.

After careful review of claimant's extensive medical record, this Administrative Law Judge finds that, from [REDACTED] until the time of his death in [REDACTED], claimant's exertional and non-exertional impairments rendered 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

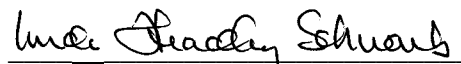
216 (1986). The department has failed to provide vocational evidence which establishes that claimant had the residual functional capacity for substantial gainful activity and that, given claimant's age, education, and work experience, there were significant numbers of jobs in the national economy which the claimant could have performed despite his limitations.

Accordingly, this Administrative Law Judge concludes that, from [REDACTED] through [REDACTED] [REDACTED] 9, claimant was 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 met the definition of medically disabled under the Medical Assistance program as of [REDACTED].

Accordingly, the department is ordered to initiate a review of the August 31, 2007, and May 9, 2008, applications, if it has not already done so, to determine if all other non medical eligibility criteria are met. The department shall inform the authorized representative of claimant's estate of its determination in writing.


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

Date Signed: February 3, 2010

Date Mailed: February 4, 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.

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:

