

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: 2009-11522

Issue No: 2009/4031

Case No: [REDACTED] A

Load No: [REDACTED]

Hearing Date:

May 7, 2009

Wayne 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 May 7, 2009. Claimant appeared and testified. Following the hearing, the record was kept open for the receipt of additional 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) 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 October 24, 2008, claimant applied for MA-P and SDA benefits. Claimant did not request retroactive medical coverage.

(2) On November 20, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.

(3) On December 29, 2008, claimant filed a hearing request to protest the department's determination.

(4) Claimant, age 50, is a high school graduate with an associate's degree in business administration.

(5) Claimant last worked in October of 2008 as the owner and operator of a water services company, installing water mains, water testing and the like. Claimant's work history consists of skilled work activities which are not currently transferable due to claimant's physical limitations.

(6) Claimant has a history of cocaine addiction; tobacco abuse; bipolar disorder, laminectomy at C6-C7; and a right upper lobe large bulla resection in approximately 1998.

(7) Claimant was hospitalized [REDACTED] through [REDACTED]^d of 2008 with a diagnosis of large left lung bulla. His discharged diagnosis was large left lung bulla; history of right upper lobe resection, secondary to large bulla ten years ago; chronic obstructive pulmonary disease; hypertension; diabetes mellitus; and bipolar disorder. It was indicated that claimant likely need a resection of his left upper lobe bulla.

(8) Claimant was hospitalized [REDACTED] through [REDACTED] of 2009 as a result of a left-sided giant bolus disease. He underwent a left thoracotomy with giant bolus bleb removal times two.

(9) Claimant currently suffers with emphysema with bullous disease; hypertension; diabetes mellitus; hyperlipidemia; bipolar disorder; and cocaine abuse.

(10) Claimant has severe limitations upon his ability to walk, stand, lift, carry, and handle as well as limitations upon his ability to respond appropriately to others and deal with changes in a routine work setting. Claimant's limitations have lasted 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 he has significant physical and mental limitations upon his ability to perform basic work activities such as walking, standing, 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 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 currently capable of the walking, standing, lifting, carrying, or personal interaction required by his past employment. Claimant has presented the required data and medical 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 has a history of bipolar disorder, cocaine addiction, tobacco abuse, lamenectomy at C6-7, and right upper lobe thoracotomy secondary to bullous disease. He was hospitalized in October of 2008 and underwent a left lung thoracotomy and resection secondary

to a large left lung bulla. On May 20, 2009, claimant underwent a left thoracotomy and resection secondary to giant bullous disease. On March 5, 2009, claimant's treating psychiatrist diagnosed claimant with major depressive disorder, severe and cocaine dependency. Claimant was given a current GAF score of 45. On June 2, 2009, claimant's treating psychiatrist diagnosed claimant with bipolar I disorder and cocaine dependence. The treating psychiatrist opined that claimant was marketed limited with regard to the ability to maintain attention and concentration for extended periods; the ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; the ability to work in coordination with approximately to others without being distracted by them; the ability to make simple work-related decisions; the ability to respond appropriately to change in the work setting; the ability to travel in unfamiliar places and use public transportation; and the ability to set realistic goals or make plans independently of others. The treating psychiatrist found claimant to moderately limited with regards to his ability to remember locations and work like procedures; the ability to understand and remember one or two-step instructions; the ability to carry out simple, one of two-step instructions; the ability to sustain an ordinary routine without supervision; the ability to make simple work-related decisions; the ability to ask simple questions or request assistance; the ability to accept instructions and respond appropriately to criticism from supervisors; and the ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness; and the ability to be aware of normal hazards and take appropriate precautions.

On June 5, 2009, claimant's treating family physician diagnosed claimant with emphysema, hypertension, and hyperlipidemia. The physician opined that claimant was capable of occasionally lifting up to 10 pounds while limited to standing and walking less than 2 hours in

an 8 hour work-day and sitting less than 6 hours in an 8 hour work-day. The physician indicated that claimant was incapable of pushing/pulling with the bilateral upper extremities.

On June 8, 2009, claimant's treating pulmonologist diagnosed claimant with emphysema. The physician indicated that claimant was incapable of lifting any amount of weight and incapable of repetitive activities with the upper or lower extremities. The specialist indicated that claimant's limitations were expected to last more than 90 days. The pulmonologist also noted difficulties with comprehension, sustained concentration, and social interaction.

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.

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 and SDA benefits. See PEM, Item 260, pp. 5 and 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 problems 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

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 and State Disability Assistance programs as of October of 2008.

Accordingly, the department is ordered to initiate a review of the October 24, 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 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 March of 2010.

The Medical Social Work Consultant, in conjunction with the Medical Review Team, is to consider the appropriateness of ordering claimant to participate in mandatory mental health and or substance abuse treatment as a condition of receipt of benefits. Further, a referral is to be made to Adult Protective Services consistent with this order.

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

Date Signed: 9/29/09

Date Mailed: 10/01/09

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.

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