

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.: 2009-1193
Issue No.: 2009/2011
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. The claimant appeared and testified. The claimant was represented by [REDACTED] of [REDACTED]. Following the hearing, the record was kept open for receipt of additional medical evidence. Additional documents were received and reviewed.

ISSUE

1. Did the Department of Human Services (DHS or department) properly decline to register the February 26, 2008 application because it was not signed by claimant or an Authorized Representative?
2. Did the 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, [REDACTED] faxed the department the 1st and 7th page of a DHS-1171, application for benefits, which requested MA benefits for claimant. Page 7 was signed by an employee of [REDACTED]. (Claimant Exhibit A.)
- (2) Per PAM item 105, page 1, the department did not register the February 26, 2008 application because it was not signed by claimant or an Authorized Representative.
- (3) Claimant signed an Authorization to Represent, which authorized [REDACTED] to represent claimant, on April 8, 2008.
- (4) On April 11, 2008, the department received a complete DHS-1171 application for MA benefits on behalf of claimant from [REDACTED] as claimant's Authorized Representative. The Authorized Representative sought MA-P benefits for claimant retroactive to November 2007.
- (5) On June 26, 2008, the department denied claimant's April 11, 2008 application based upon the belief that claimant did not meet the requisite disability criteria.
- (6) On September 23, 2008, a hearing request was filed to protest the department's determination.
- (7) At the hearing, the parties agreed that the issues in dispute were:
 1. Whether the department properly declined to register the February 26, 2008 application, and,
 2. Whether the department properly determined that claimant is not "disabled" for purposes of the MA benefits.

- (8) Claimant, age 34, has an 8th grade education. Claimant reportedly received special education services from grades 4 through 8.
- (9) Claimant last worked in 1995 as a construction worker.
- (10) Claimant was hospitalized [REDACTED] through [REDACTED] with a diagnosis of thrombotic thrombocytopenia purpura (TTP), anemia, thrombocytopenia, and mild renal insufficiency.
- (11) Claimant was hospitalized [REDACTED] through [REDACTED] with thrombocytopenia.
- (12) Claimant was hospitalized [REDACTED] through [REDACTED]. His discharge diagnosis was recurrent TTP, steroid induced; diabetes; steroid-induced hypertension; and sub acute left deep vein thrombosis.
- (13) Claimant was hospitalized [REDACTED] through [REDACTED] with a primary diagnosis of septic arthritis of the right knee secondary to methicillin-resistant Staphylococcus Aureus. Secondary diagnoses included hypertension and history of TTP, stable.
- (14) Claimant sought emergency room treatment on [REDACTED] as a result of acute gonococcal urethritis, thought to be secondary to unprotected sex, and acute right knee arthritis.
- (15) Claimant was hospitalized [REDACTED] through [REDACTED]. His discharge diagnosis was right knee septic arthritis. Claimant was rehospitalized [REDACTED] through [REDACTED] for septic right knee arthritis because he was unable to procure his medications following discharge on [REDACTED].
- (16) Claimant has not had, nor is he expected to have, a continuous period of 12 months or more in which has been incapable of any substantial gainful activity.

- (17) At the time of hearing, claimant complained of right knee pain and indicated that he required the assistance of crutches for ambulation.
- (18) Claimant was seen at an [REDACTED] on [REDACTED]. Claimant's right knee incision was clean, dry, and intact with no signs of erythema, discharge, or indurations. The orthopedic specialist evaluating claimant found him to be "progressing well."
- (19) Claimant has severe limitations upon his ability to walk or stand for prolonged periods of time and/or lift heavy objects. Claimant's limitations may well be expected to last 12 months or more.
- (20) 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 has the physical and mental capacity to engage in simple, unskilled, sedentary work activities 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).

With regard to the February 26, 2008 application, it appears that the department followed policy in refusing to register the application. PAM 105, page 1, provides as follows:

Right to Apply - All Programs

An application or filing form, whether faxed or mailed, must be registered with the receipt date, if it contains at least the following:

- Name of the applicant.

- Birth date of the applicant.
- Address of the applicant.
- Signature of the applicant/authorized representative.....

An application/filing form with the minimum information listed above must be registered and disposed on ASSIST using the receipt date as the application date. PAM 105, page 1.

The document received on February 26, 2008 by the department was not signed by claimant or an authorized representative. [REDACTED] did not become claimant's authorized representative until April 8, 2008 when claimant signed an Authorization to Represent which named [REDACTED] as claimant's authorized representative for purposes of establishing eligibility for MA. Accordingly, the department followed policy in declining to register the February 26, 2008 application for benefits.

With regard to the disability question, 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 general, the claimant has the responsibility to prove that he is disabled. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of

medical evidence showing that the claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

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 mean 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 limitations upon claimant’s ability to perform basic work activities such as walking and standing for prolonged periods of time and lifting heavy objects. 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 prolonged walking and standing and/or heavy lifting required by his past employment in construction. See DHS exhibit 1 page 8. It appears that claimant's only work experience has been in construction. Claimant spent a long period of time in prison where he worked in food services. The record does support a finding that claimant is not currently capable of prolonged walking and standing and/or heavy lifting such as required in the construction industry or food services 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).

This Administrative Law Judge finds that claimant's residual functional capacity for work activities on a regular and continuing basis does include the ability to meet the physical and mental demands required to perform simple, unskilled, sedentary work. Sedentary work is defined as follows:

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

There is insufficient objective medical evidence, signs, and symptoms to support a determination that claimant is incapable of performing and mental activities necessary for a wide range of sedentary work. Claimant was hospitalized as a result of his TTP blood disorder in June and November 2007 as well as April 2008. Thereafter, claimant sought hospital treatment as a result of his right knee problem in August, October, and November 2008. His right knee condition was found to be improving and progressing well at the time of his [REDACTED] follow-up visit at the [REDACTED]. The record does not document a continuous period of 12 months or more in which claimant was so disabled as to be unable to engage in any substantial gainful activity. At the time of the hearing, claimant did appear to have residual difficulties with his right knee. Nonetheless, the record fails to support the position that claimant was so disabled as to be unable to engage in any substantial gainful activity. A review of claimant's hospital records as well as claimant's testimony failed to establish ongoing limitations which would compromise claimant's ability to perform sedentary work activities on a regular and continuing basis. See Social Security Ruling 83-10 and 96-9p. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

“Occasionally” means occurring from very little up to 1/3 of the time and would general total no more than about 2 hours of an 8 hour work day. Sitting would generally total about 6 hours in an 8 hour work day. The record fails to support the position that claimant is incapable of sedentary work activities.

Considering that claimant, at age 34, is a younger individual, has an 8th grade education, has an unskilled work history, and has a sustained work capacity for sedentary work, the undersigned finds that claimant’s impairments do not prevent him from doing other work. As a guide, see 20 CFR, Part 404, Subpart P, Appendix 2, Table 1, Rule 201.23. Accordingly, the undersigned must find that claimant is not 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:

1. The Department of Human Services properly declined to register the February 26, 2008 application because it was not signed by claimant or an authorized representative.
2. The department properly determined that claimant is not “disabled” for purposes of the Medical Assistance program.

According, the department’s determination is this matter is **HEREBY AFFIRMED**.

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

Date Signed: 07/14/09

Date Mailed: 07/15/09

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 the Circuit 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

cc:

