

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: 2009-13959
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 17, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

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 hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on June 17, 2009. The Claimant appeared and testified. Deborah McBride, MCW appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of retroactive Medical Assistance ("MA") program.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant filed for MA on August 27, 2008. Claimant requested MA retroactive to May 2008.
2. Claimant was hospitalized in [REDACTED] of 2008 for a cerebral hemorrhage.
3. Claimant was discharged and then readmitted in [REDACTED] of 2008 for another subdural hemorrhage.

4. Claimant died in the hospital.
5. On 3/17/09, SHRT disabled Claimant as of September 2008.
6. On 3/20/09, an Order was entered approving medical eligibility for Claimant for MA effective September 2008.
7. Claimant's authorized representative submitted a hearing request on the issue of retroactive MA benefits on December 18, 2008.
8. Claimant indicated in his application that he performed laundry, vacuuming, and washing dishes on a daily basis.
9. Claimant also indicated in his application that his hobbies and activities had changed since his illness began as he was tired and had headaches and dizziness.
10. Claimant's representative presented no evidence on Claimant's ability to work from May 2008 through Claimant's second hospital admission in [REDACTED] 2008.
11. Medical records examined are as follows:

[REDACTED] Hospital Admission (Exhibit 1, pp. 7- 17)

HOSPITAL COURSE: Patient presented to hospital with complaints of headache (throbbing frontal and temporal, no relief from Tylenol, never had this bad in past) started to get dizzy today.

DISCHARGE DIAGNOSES:

1. Possible subarachnoid hemorrhage;
2. Hypertension; and
3. SIADH

DISCHARGE INSTRUCTIONS: The patient is to follow up with free clinic as specified by social worker and with Dr. of neurology in about 2-3 weeks time. The patient is to maintain on 1500 ml fluid restricted diet. (p. 7)

[REDACTED] Hospital Admission (Exhibit 1, pp. 17 – 48).

Patient was admitted after a fall from seizures. He had several more seizures between the EMS and arriving by ambulance to the ER.

IMPRESSION: Status post seizures with hyponatremia, he is likely in a postictal state. There is a moderate amount of mass effect from the subdural hematoma. Proceed with intubation and placed on mechanical ventilatory support. Admitted to ICU. Patient expired.

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 400.1 *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 CFR416.905

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 impairment(s); residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. A determination that an individual is disabled can be made at any step in the sequential evaluation. Then evaluation under a subsequent step is not necessary.

1. Current Substantial Gainful Activity

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, under the first step, client was not working from May 2008 to September 2008. Therefore, the Claimant is not disqualified from receipt of disability benefits under Step 1.

2. Medically Determinable Impairment – 12 Months

Second, 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 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. The court in *Salmi v Sec’y of Health and Human Servs*, 774 F.2d 685 (6th Cir 1985) held that an impairment qualifies as “non-severe” only if it “would not affect the claimant’s ability to work,” “regardless of the claimant’s age, education, or prior work experience.” *Id.* At 691-92. Only slight abnormalities that minimally affect a claimant’s ability to work can be considered non-severe. *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6th Cir. 1985).

In this case, the Claimant presented medical evidence of a subdural hemorrhage and SIADH from which Claimant died. The medical evidence, therefore, has established that Claimant has a medical impairment that has more than a minimal effect on basic work activities; and Claimant’s impairments resulted in death. The analysis will continue at step three.

3. Listed Impairment

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Based on the hearing record, the undersigned finds that the Claimant's medical record supports a finding that the Claimant's physical impairments are "listed impairment(s)" or equal to a listed impairment. 20 CFR 416.920(a) (4) (iii). In this matter, the medical records establish a diagnosis of subarachnoid or subdural hemorrhage. Appendix 1 of Subpart P of 20 CFR, Part 404.

After reviewing the criteria of listing 11.00(F) traumatic brain injury and 11.18 *Cerebral Trauma*, the undersigned finds the Claimant's medical records substantiate that the Claimant's mental impairments meets or is medically equivalent to the listing requirements. 20 CFR 404 § 11.00(F) describes head trauma as follows:

Traumatic brain injury (TBI). The guidelines for evaluating impairments caused by cerebral trauma are contained in 11.18. The listing 11.18 states that cerebral trauma is to be evaluated under 11.02, 11.03, 11.04 and 12.02 as applicable.

TBI may result in neurological and mental impairments with a wide variety of posttraumatic symptoms and signs. The rate and extent of recovery can be highly variable and the long-term outcome may be difficult to predict in the first few months post injury.

In some cases, evidence of a profound neurological impairment is sufficient to permit a finding of disability within 3 months post-injury.

In this case, the Claimant presented to the emergency room in [REDACTED] of 2008 with severe headaches and dizziness. A subarachnoid hemorrhage was confirmed by CT scan and MRI. Claimant was discharged home but did not return to work. Claimant continued to suffer from severe headaches and dizziness. Claimant then suffered from seizures and was readmitted to the hospital in [REDACTED] of 2009 with ongoing evidence of a subdural hemorrhage. Claimant died in the hospital. Because Claimant died from the same injury that sent him to the hospital three

months prior, the Administrative Law Judge finds that the hemorrhage was a profound neurological impairment and meets the intent of severity of the listing. 20 CFR 404 § 11.18.

Therefore, the undersigned finds the Claimant's medical records substantiate that the Claimant's mental impairments meets or are medically equivalent to the listing requirements of cerebral trauma. In this case, this Administrative Law Judge finds the Claimant is presently disabled at the third step for purposes of the Medical Assistance (MA) program. As claimant is disabled, there is no need to evaluate Claimant with regards to the fourth or fifth steps.

In this case, there is sufficient evidence to support a finding that Claimant's impairment has disabled him under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA program beginning May 2006.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is medically disabled for purposes of the MA program as of May 16, 2008 and Claimant is entitled to retroactive benefits through May 2008.

Therefore, the department is ORDERED to initiate a review of the application of August 27, 2006, if not done previously, to determine claimant's non-medical eligibility. The department shall inform the claimant of the determination in writing. The case shall be reviewed in June 30, 2010.

/s/

Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 07/06/09

Date Mailed: 07/08/09

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 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.

JV/dj

cc:

