

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████,

Claimant

Reg. No.: 2009-13961

Issue No.: 2009

Case No.: ██████████

Load No.: ██████████

Hearing Date:

April 9, 2009

Wayne County DHS (35)

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 April 9, 2009. Claimant appeared and testified. 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 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 March 17, 2008, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to January of 2008.

- 2) On October 31, 2008, a hearing request was filed to protest the department's failure to provide requested benefits.
- 3) On December 29, 2008, the department formally denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 4) Claimant, age 52, has a Bachelor's in broadcasting.
- 5) Claimant last worked in January of 2008, self-employed in sales and sound installations. Claimant has also performed relevant work in telecommunication sales.
- 6) Claimant has a skilled work history in which the skills are not currently transferable due to physical limitations.
- 7) Claimant was hospitalized [REDACTED], as a result of loss of consciousness and mental status changes secondary to head trauma. He was discharged on [REDACTED], with discharge diagnoses of mental status change, likely secondary to concussion; resistant hypertension with hypertensive emergency; seizure disease; acute on chronic kidney disease; pernicious anemia; gout; glucose intolerance; anemia of chronic disease; and elevated urine metanephrine.
- 8) Claimant currently suffers from poorly controlled hypertension, obesity, diabetes mellitus, gout, pernicious anemia, pain in the left arm with paresthia, history of seizure disorder, chronic renal failure, and obstructive sleep apnea.
- 9) Claimant has severe limitations upon his ability to walk, stand, sit, lift, carry, and handle. Claimant's limitations have lasted for twelve months or more.

- 10) 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 limitations upon his ability to perform basic work activities such as walking, standing, sitting, lifting, 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. 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 walking, standing, sitting, lifting, carrying, or handling required by his past 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 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 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 was hospitalized in [REDACTED] following head trauma resulting in loss of consciousness and altered mental status. He was discharged in [REDACTED] with a diagnosis of mental status change, likely secondary to concussion; resistant hypertension with hypertensive emergency; seizure disease; acute on chronic kidney disease; pernicious anemia; gout; glucose intolerance; anemia of chronic disease; and elevated urine metanephrine. On [REDACTED], claimant's treating physician diagnosed him with acute seizure, acute renal failure, chronic renal failure, hypertensive urgency, anemia, and gout. The physician opined that claimant was incapable of lifting any amount of weight and limited to standing and walking less than two hours in an eight-hour work day and sitting less than eight hours in an eight-hour work day. The physician indicated that claimant was incapable of

pushing/pulling or fine manipulation with the bilateral upper extremities and incapable of operating foot or leg controls with the bilateral lower extremities. On [REDACTED], another treating physician diagnosed claimant with seizure disorder, uncontrolled hypertension/hypertensive urgency, acute on chronic renal failure, and anemia. That physician indicated that claimant was incapable of lifting any amount of weight and limited to standing less than one hour, walking less than two hours, and sitting less than two to three hours in an eight-hour work day. That physician indicated that claimant was incapable of reaching, pushing/pulling, and fine manipulation with the bilateral upper extremities as well as incapable of operating foot or leg controls with the bilateral lower extremities. On [REDACTED], claimant's treating internist diagnosed claimant with seizure disorder, acute renal failure, chronic renal failure, hypertensive urgency, anemia, gout, obstructive sleep apnea, coronary artery disease, and malignant hypertension. The physician indicated that claimant was incapable of lifting any amount of weight and limited to standing and walking less than two hours of an eight-hour work day and sitting less than six hours in an eight-hour work day. The physician indicated that claimant was incapable of reaching, pushing/pulling, and fine manipulation with the bilateral upper extremities and incapable of operating foot or leg controls with the bilateral lower extremities. Claimant was seen by a consulting internist for the department on [REDACTED]. The consultant provided the following impression:

1. Hypertension – poorly controlled despite current medication. He has a history of malignant hypertension, which was noted and diagnosed while he was hospitalized in January 2008 during which time he was apparently noted to have acute renal failure on top of chronic kidney disease. He was also diagnosed at that time with seizure activity and placed on medication. He was also told that he had an enlarged heart consequent to the high blood pressure.
2. Obesity – BMI 32.
3. Borderline diabetes

4. Gout.
5. Pernicious anemia by history.
6. Pain in the left arm with paresthesia – he claims that he dislocated the fourth and fifth fingers on the left during his hospitalization. He has pain in his left shoulder and left arm. An MRI done in [REDACTED] showed spinal stenosis at C6 level. His hand grip is weak bilaterally.

MEDICAL SOURCE STATEMENT: Based upon today's examination, the claimant is not able to work eight hours per day. He is unable to work in a seated or standing position. He has chronic back pain and pain in the left upper extremity was associated paresthesia. The upper extremities are limited in the range of motion as far as the ability to lift, carry or push. He is not able to push, pull or carry more than twenty pounds. There is limitation in climbing stairs, ropes, ladders and scaffolding due to the above impressions specifically chronic back pain, pain in the left upper extremity and seizure activity.

The consulting internist opined that claimant is limited to occasionally lifting up to ten pounds and limited to standing and walking less than two hours in an eight-hour work day and sitting less than six hours in an eight-hour work day. The consultant also indicated that claimant was incapable of reaching or pushing/pulling with the bilateral upper extremities.

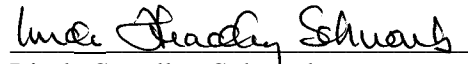
After careful review of claimant's extensive medical record and the Administrative Law Judge's personal interaction with claimant at the hearing, this Administrative Law Judge finds that claimant's exertional and non-exertional impairments render claimant unable to engage in a full range of even sedentary 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.

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 program as of January of 2008.

Accordingly, the department is ordered to initiate a review of the March 17, 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 and his authorized representative 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 January of 2011.


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

Date Signed: February 3, 2010

Date Mailed: February 5, 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.

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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

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