

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: 2009-16993

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 17, 2009

Macomb 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 June 17, 2009. Claimant appeared and testified. Claimant was represented [REDACTED]

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 from June of 2008 through March of 2009?

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 September 9, 2008, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to June of 2008.

(2) On October 13, 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 23, 2008, a hearing request was filed to protest the department's determination.

(4) Effective April 1, 2009, based upon an April 2, 2009 application, the department opened MA-P for claimant. The Medical Review Team found that claimant met listing 1.04A and established a review of eligibility date for May of 2012.

(5) Claimant, age 51, has a high school education.

(6) Claimant last worked in November of 2007 as a press operator, spot welder, and assembly line worker. Claimant's relevant work history involved medium work activities and is characterized as unskilled

(7) Claimant has a history of depression, carpal tunnel syndrome with surgery, chronic low back pain and poorly controlled diabetes mellitus.

(8) Claimant was hospitalized June 30, 2008 as a result of pain and numbness in the right lower extremity with inability to lift up claimant's right foot. She was diagnosed with right lumbar radiculopathy and uncontrolled diabetes.

(9) Claimant was rehospitalized August 19th through August 25th of 2008 with a discharge diagnosis of thoracic-lumbosacral neuritis/radiculitis. Additional diagnoses included arterial embolism or thrombosis of the lower extremities; cellulites and abscess of the hand; deformity of ankle or foot; dysthymic disorder; diabetes mellitus type 2, uncontrolled; polyneuropathy; stricture of the artery; benign essential hypertension; tobacco abuse disorder; B complex deficiency; and constipation. Claimant underwent arteriography of intra-abdominal arteries.

(9) Claimant was hospitalized November 14, 2008 when she fell and slammed her right foot into the wall, avulsing her great toenail. Claimant's toenail was surgically removed.

(10) Claimant suffers from poorly controlled diabetes mellitus; peripheral vascular disease; hyperlipidemia; essential hypertension; asthma; spinal stenosis of the lumbar spine and bilateral neuropathy, right greater than left, with right foot drop.

(11) Claimant has severe limitations upon her ability to walk, stand, sit, lift, carry, reach or handle. Claimant's limitations have lasted for 12 months or more.

(12) Claimant suffers from a disorder of the spine with evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, and motor loss accompanied by sensory loss.

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 from 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 claimant has significant physical limitations upon her 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. The undersigned Administrative Law Judge finds that the record supports a finding that claimant’s impairment meets or equals a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A, Section 1.04A. Claimant suffers from a disorder of the spine with evidence of nerve root compression characterized by neural anatomic distribution of pain, limitation of motion of the spine, and motor loss accompanied by sensory loss. An MRI of claimant’s lumbar spine taken on June 30, 2008 document foraminal stenosis bilaterally at L4-L5 and L5-S1 as well as central canal stenosis at L4-L5. On April 14, 2009 claimant’s treating physician diagnosed claimant with peripheral vascular disease status-post

angioplasty and stent placement in the left lower extremity (8-20-2008), uncontrolled oral agent diabetes mellitus, hyperlipidemia, asthma, essential hypertension, and symptomatic, bilateral neuropathy with right greater than left symptoms. Claimant was described as having right foot drop. The treating physician indicated that claimant was 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.

Claimant was found to be incapable of operating foot or leg controls with the bilateral lower extremities. Giving the hearing record, the undersigned finds that from June of 2008 through March of 2009 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 from June of 2008 through Mary of 2009 claimant met the definition of medically disabled under the Medical Assistance program.

Accordingly, the department is ordered to initiate a review of the September 9, 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 her authorized representative of its determination in writing. The Medical Review Team has established a reconsideration of eligibility in May of 2012.

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

Date Signed: 10/26/09

Date Mailed: 10/26/09

heading

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.

LSS/at

cc:

