

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.: 2009-17923

Issue No.: 2009

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

June 24, 2009

Wayne County DHS (18)

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 24, 2009. The claimant appeared and testified. The claimant was represented by [REDACTED] of [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 July 2008 through December 2008?

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 28, 2008, an application was filed on claimant's behalf for MA-P benefits.

The application requested MA-P retroactive to July 2008.

- (2) On December 2, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- (3) On February 26, 2009, a hearing request was filed to protest the department's determination.
- (4) Thereafter, the Medical Review Team approved MA-P for claimant based upon a subsequent application. MA-P was opened for claimant effective January 1, 2009.
- (5) At the hearing, the parties agreed that the issue in question was whether claimant was "disabled" for purposes of MA for the period from July 2008 through December 2008.
- (6) Claimant, age 52, has a 10th grade education.
- (7) It appears that claimant has had no relevant work experience.
- (8) Claimant has a history of a motor vehicle accident in [REDACTED] resulting in a fracture of claimant's right leg with open reduction and internal fixation. Claimant has walked with a cane since the injury. Claimant also has a history of multiple myocardial infarctions with multiple stent placements.
- (9) Claimant was hospitalized [REDACTED] through [REDACTED] as a result of an acute myocardial infarction.
- (10) Claimant was hospitalized [REDACTED] through [REDACTED] with a discharged diagnosis of ischemic cardiomyopathy angina, coronary artery disease, hyperlipidemia, and hypertension. Claimant underwent a coronary angioplasty with stent placement.
- (11) Claimant was hospitalized [REDACTED] secondary to chest pain.
- (12) Claimant was hospitalized [REDACTED] through [REDACTED] secondary to chest pain. He was diagnosed with a myocardial infarction as well as coronary atherosclerosis, bipolar disorder, chronic obstructive pulmonary disease, hepatitis C, tobacco use

disorder, and history of myocardial infarction. He underwent coronary angioplasty with stent placement.

- (13) Claimant suffers from coronary artery disease with history of multiple myocardial infarctions and stent placements; ischemic cardiomyopathy; angina; hyperlipidemia; hypertension; hepatitis C; and schizoaffective disorder. In [REDACTED], claimant had a GAF score of 48.
- (14) During the period from July 2008 through December 2008, claimant had severe limitations upon his ability to walk, stand, lift, push, pull, reach, carry, or handle; as well as understanding, carrying out, and remembering simple instructions; use of judgment; responding appropriately to others; and dealing with changes in a routine work setting.
- (15) Claimant's complaints and allegations concerning his impairments and limitations for the period of July 2008 through December 2008, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who was 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, during the period from July 2008 through December 2008, claimant was 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, from July 2008 through December 2008, claimant had significant physical and mental limitations upon claimant’s ability to perform basic work activities such as walking, standing, lifting, pushing, pulling, reaching, carrying, or handling; understanding, carrying out, and remembering simple instructions; use of judgment; 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, from July 2008 through December 2008, had an impairment (or combination of impairments) that had 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) prevented claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge that claimant has had no relevant work experience. Accordingly, claimant may not be eliminated from MA at this step in the sequential evaluation process.

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.

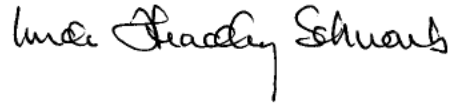
In this matter, claimant has had multiple myocardial infarctions with multiple stent placements. He was frequently hospitalized throughout the time period in question as a result of his cardiac condition. The medical record supports a finding that from July 2008 through December 2008, claimant suffered from the following conditions: coronary artery disease with history of multiple myocardial infarctions and stent placements; ischemic cardiomyopathy; angina; hyperlipidemia; hypertension; hepatitis C; and schizoaffective disorder. In [REDACTED], claimant's treating psychiatrist at Team Mental Health diagnosed claimant with schizoaffective disorder and found that claimant had a current GAF score of 48.

After careful review of claimant's extensive medical record, the undersigned finds that, from July 2008 through December 2008, 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 record supports a finding that claimant did not have the residual functional capacity. The department has failed to provide vocational evidence which establishes that claimant had the residual functional capacity for substantial gainful employment during the period in question and that, given claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which claimant could have performed despite claimant's limitations. Accordingly, the undersigned concludes that claimant was disabled from July 2008 through December 2008 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 met the definition of medically disabled under the Medical Assistance program from July 2008 through December 2008.

Accordingly, the department is ordered to initiate a review of the October 28, 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 representation of its determination in writing.



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

Date Signed: 10/26/09

Date Mailed: 10/26/09

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:

