

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.: 2009-2530
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 11, 2009
Wayne County DHS (15)

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 March 11, 2009. Claimant appeared and testified. Claimant was represented by [REDACTED]. 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 April 25, 2008, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to March of 2008.

- 2) On July 3, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On September 29, 2008, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 35, is a high-school graduate who completed barber college.
- 5) At the time of the hearing, claimant was working 20 to 25 hours a week as a barber.
- 6) In addition to work as a barber, claimant has also performed relevant work as a machine operator, hi-lo driver, and equipment and small engine repair person.
- 7) Claimant has a work history involving skilled work. Claimant's work skills are transferable.
- 8) Claimant was hospitalized [REDACTED] following a myocardial infarction. Claimant underwent angioplasty with stent placement.
- 9) Claimant has enjoyed improvement in his cardiac impairment since the [REDACTED] [REDACTED] myocardial infarction. (Claimant Exhibit D.)
- 10) Claimant currently suffers from coronary artery disease with history of myocardial infarction, angioplasty, and stent placement; panic disorder with agoraphobia; and history of alcohol dependence.
- 11) Claimant has moderate limitations upon his ability to get along with others and with sustained concentration and persistence. Claimant's limitations have lasted or are expected to last twelve months or more.

- 12) Claimant is capable of meeting the physical and mental demands associated with his past and current employment as a barber as well as other forms of work 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 general, 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, at the time of the hearing, claimant reported that he was working 20 to 25 hours a week as a barber. The record does not support a finding that claimant was engaged in substantial gainful activity. See 20 CFR 416.974. Accordingly, claimant may not be eliminated 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 limitations upon his ability to perform basic work activities such as responding appropriately to supervision, co-workers, and usual work situations. 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). In this case, in [REDACTED], claimant suffered a myocardial infarction and underwent angioplasty with stent placement. The medical records indicate that claimant's cardiac status has significantly improved since that time. (See Claimant Exhibit D.) Although claimant is working 20 to 25 hours a week as a barber, claimant asserted that he was unable to return to work full time because of anxiety. Claimant was evaluated by a consulting psychiatrist for the department on [REDACTED]. The consultant diagnosed claimant with panic disorder with agoraphobia, moderate, secondary to cardiac event two years post; and history of alcohol dependence. The consultant wrote as follows:

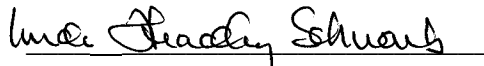
“... he appears capable of performing activities of daily living independently and managing money matters... The evaluation shows retained abilities to understand, remember and follow instructions. It is opinioned that his ability to respond appropriately to supervision, co-workers as well as adapt to changes in the work setting are not impacted by his problems.

The psychologist gave claimant a current GAF score of 60 and found that claimant was moderately limited with regard to his ability to maintain attention and concentration for extended periods; the ability to perform activities within a schedule, maintain regular attendance and be punctual within customary tolerances; the ability to complete a normal work day and work week without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods; and the ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes. The consultant found that claimant was not significantly limited in all other areas of understanding and memory,

sustained concentration and persistence, social interaction, and adaption. It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings, as well as claimant's own testimony as to his ability to function in his home, on the job, and in the community, that claimant is capable of his past work. As indicated, at the time of the hearing, claimant was performing his past work as a barber approximately 20 to 25 hours per week. Accordingly, claimant may not be found 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 the Department of Human Services properly determined that claimant is not "disabled" for purposes of the Medical Assistance program. Accordingly, the department's determination in this matter is hereby affirmed.


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

Date Signed: April 13, 2010

Date Mailed: April 14, 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.

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

cc:

