

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.: 2009-2848  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
May 11, 2009  
Macomb County DHS (36)

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 May 11, 2009. Claimant appeared and testified. Claimant was represented by [REDACTED] [REDACTED] of [REDACTED]. Following the hearing, the records 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 was not "disabled" for purposes of the Medical Assistance (MA-P) program from [REDACTED] [REDACTED]?

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 July 15, 2008, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to [REDACTED].
- 2) On September 19, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On October 20, 2008, a hearing request was filed to protest the department's determination.
- 4) On [REDACTED], the Social Security Administration found claimant to be "disabled" for purposes of Supplemental Security Income effective [REDACTED] based upon an application of October 28, 2008.
- 5) Thereafter, the department opened MA-P for claimant effective [REDACTED].
- 6) At the hearing, the parties agreed that the issue in question was whether or not claimant was "disabled" for purposes of MA-P from [REDACTED].
- 7) Claimant, age 41, has a tenth-grade education.
- 8) Claimant last worked in 2007 as a dish washer and car detailer. Claimant has had no other relevant work experience. Claimant's relevant work history consists exclusively of unskilled work activities.
- 9) Claimant has a history of chronic alcohol abuse, recurrent seizure disorder with multiple hospitalizations for same, psychosis, hypertension, and asthma. A CT of the brain performed on [REDACTED], documented advanced cortical atrophy and ischemic change.
- 10) Claimant was hospitalized [REDACTED] for recurrent seizures.
- 11) Claimant was hospitalized [REDACTED] for recurrent seizures.

- 12) From [REDACTED], claimant suffered from recurrent breakthrough seizures and hypertension.
- 13) From [REDACTED], claimant suffered from grand mal seizures occurring more frequently than once a month in spite of prescribed treatment. Claimant's episodes involve loss of consciousness and convulsive seizures.
- 14) From [REDACTED], 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 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, from April through June of 2008, claimant was not working. Therefore, claimant may not be disqualified from MA during that period 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 (6<sup>th</sup> 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 [REDACTED], claimant had significant physical and mental limitations upon his ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, and handling as well as the inability to respond appropriately to others and deal with changes in a routine work setting due to his uncontrolled seizure disorder. 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.

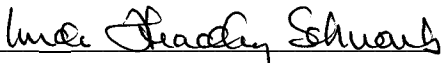
In the third step of the sequential consideration of a disability claim, the trier of fact must determine if, from [REDACTED], claimant’s impairment (or combination of impairments) was listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Based upon claimant’s diagnosis as stated above, the undersigned finds that, from [REDACTED], claimant’s impairments met or equaled a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Second 11.2. During the time period in question, claimant suffered from a seizure disorder with daytime episodes (lost of consciousness and grand mall seizures) which occurred more frequently than once a month in spite of at least three month’s of prescribed

treatment. Accordingly, the undersigned finds that, from [REDACTED], 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 [REDACTED], claimant met the definition of medically disabled under the Medical Assistance program.

Accordingly, the department is ordered to initiate a review of the July 15, 2008, application, if it has not already done so, to determine if all other non medical eligibility criteria were met. The department shall inform claimant and his authorized representative of its determination in writing.

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

Date Signed: February 16, 2010

Date Mailed: February 18, 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:

