

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2009-35708
Issue No.: 2009
Case No.:
Load No.:
Hearing Date: November 12, 2009
DHS County: Wayne (15)

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 November 12, 2009. Claimant appeared and testified. Claimant was represented by . 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 15, 2009, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to January of 2009.
2. On June 27, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
3. On July 28, 2009, claimant filed a hearing request to protest the department's determination.
4. On September 22, 2009, claimant's authorized representative filed a hearing request to protest the department's determination.

5. Claimant, age 53, has a high-school education.
6. Claimant last worked in 1996 as a carpenter/drywall installer. Claimant is no longer able to engage in past work activities due to physical limitations.
7. Claimant has a history of closed-head injury in [REDACTED], chronic obstructive pulmonary disease, emphysema, hiatal hernia, and degenerative disc disease.
8. Claimant was hospitalized [REDACTED] as a result of an acute exacerbation of chronic obstructive pulmonary disease.
9. Claimant was hospitalized [REDACTED] as a result of an acute exacerbation of chronic obstructive pulmonary disease, hypoxia, closed-head injury, and hiatal hernia.
10. Claimant was hospitalized [REDACTED], as a result of a seizure.
11. Claimant currently suffers from severe chronic obstructive pulmonary disease, emphysema, moderate obesity, hiatal hernia, degenerative disc disease, allergic rhinitis, and tobacco abuse.
12. Claimant has severe limitations upon his ability to walk, stand, lift, push, pull, reach, carry, or handle. Claimant's limitations have lasted twelve months or more.
13. 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.
14. On January 6, 2010, the Social Security Administration awarded Supplemental Security Income to claimant based upon an application of August 24, 2009.

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 (BAM), the Program Eligibility Manual (BEM) 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, 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. Based upon the hearing record, the undersigned finds that claimant’s impairments meet or equal a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A, Section 3.02. Claimant has a history of severe chronic obstructive pulmonary disease and emphysema. He was hospitalized in [REDACTED] as a result of acute exacerbation of chronic obstructive pulmonary disease. On [REDACTED], claimant’s treating family physician wrote as follows:

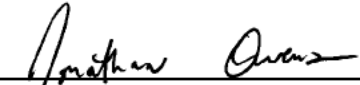
“... is under my care. Patient has a history of severe COPD. He is unable to perform any physical work or activity at this time.”

On [REDACTED], claimant’s treating family physician opined that claimant was limited to standing and walking less than two hours in an eight-hour work day due to dyspnea. The physician noted that “patient has severe breathing problems, any manual labor causes increased shortness of breath.” The physician also noted that, secondary to his closed-head injury in [REDACTED], claimant demonstrated problems with comprehension and memory. After careful review of the entire record, the undersigned finds that claimant meets or equals a listed impairment. Accordingly, the undersigned must find that claimant was “disabled” for purposes of the MA program effective [REDACTED].

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 2009.

Accordingly, the department is ordered to initiate a review of the April 15, 2009, 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.


Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 8, 2010

Date Mailed: December 9, 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.

JWO/pf

cc:

