

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.: 2009-6920
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 25, 2009
Macomb County DHS (20)

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 25, 2009. The claimant appeared and testified. The claimant was represented by [REDACTED] of L & S Associates, Inc.

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 December 2005 through July 2007?

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 March 31, 2006, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to December 2005.

- (2) Thereafter, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- (3) A timely hearing request was filed to protest the department's determination.
- (4) On May 8, 2008, a hearing was held before the Honorable Landis Lain. Judge Lain ordered the department to re-submit the medical packet to the Medical Review Team (MRT).
- (5) Thereafter, on August 22, 2008, the department again denied the March 31, 2006 application based upon a MRT denial.
- (6) On October 14, 2008, a hearing request was filed to protest the department's determination.
- (7) On December 29, 2008, the State Hearing Review Team approved MA-P for claimant retroactive to August 2007 based upon a Supplemental Security Income award by the Social Security Administration.
- (8) The department then opened MA-P for claimant effective August 2007.
- (9) At the hearing, the parties agreed that the question in dispute was whether claimant met the "disability criteria" for purposes of MA-P from December 2005 through July 2007.
- (10) Claimant, age 56, has an 11th grade education.
- (11) Claimant last worked in 2000 performing work as a spray painter and sand blaster. Claimant has also performed relevant work as a truck driver. Claimant's relevant work history consists exclusively of unskilled work activities.
- (12) Claimant has had no vision in his left eye since birth.
- (13) Claimant was injured in a fall on [REDACTED]. He was hospitalized from [REDACTED] through [REDACTED]. His discharge diagnosis was acute left frontal

cerebral contusion and hemorrhage, posttraumatic with vasogenic edema; intractable posttraumatic cephalalgia; old nasal bone fracture; acute comminuted fracture of the right scapula; chronic obstructive pulmonary disease; mild hyponatremia; sinus bradycardia; and essential hypertension.

- (14) From December 2005 through July 2007 claimant suffered from constant dizziness, daily headaches, and blurred vision secondary to head injury and brain tumor; essential hypertension; chronic obstructive pulmonary disease; gouty arthritis; degenerative disc disease; and pain and reduced range of motion of the right shoulder.
- (15) From December 2005 through July 2007 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 performing 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 December 2005 through July 2007 claimant was not working. Therefore, claimant may not be disqualified for MA at this point 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 December 2005 through July 2007, claimant had significant physical limitations upon claimant’s ability to perform basic work activities such as walking, standing, lifting, pushing, reaching, carrying, or handling. Medical evidence has clearly established that claimant had an impairment (or combination of impairments) from December 2005 through July 2007 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) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings, that claimant was not capable of the walking, standing, lifting, or carrying required by his past employment during the period from December 2005 through July 2007. Claimant has presented the required medical data and evidence necessary to support a finding that he was not, at that point, capable of performing such work.

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 suffered a serious head injury on [REDACTED]. He was hospitalized from [REDACTED] through [REDACTED]. His discharge diagnosis was as follows: acute left frontal cerebral contusion and hemorrhage, posttraumatic with vasogenic edema; intractable posttraumatic cephalalgia; old nasal bone fracture; acute comminuted fracture of the right scapula; chronic obstructive pulmonary disease; mild hyponatremia; sinus bradycardia; and essential hypertension. An MRI of claimant's brain performed on [REDACTED] [REDACTED] revealed a mass along the inferior aspect of the left frontal lobe with a smaller mass in the left frontal lobe more superiorly in position. The finding raised the possibility of a metastatic process. A CT of the right scapula on [REDACTED] documented the comminuted fracture as well as a degree of coronary artery calcification and degree of degenerative changes of the visualized spine. Claimant was seen by a consulting internist for the department on [REDACTED] [REDACTED]. The consultant diagnosed chronic obstructive pulmonary disease; status post degenerative disc disease, surgery for a herniated disc; rule out osteoarthritis of the right hip; gouty arthritis of the left metatarsophalangeal joint; and brain tumor which may be a metastification or may be due to meningioma.

At the hearing, claimant testified that from December 2005 through July 2007, and beyond, he has suffered from constant dizziness, daily headaches, blurred vision, right shoulder pain and reduced range of motion, and shortness of breathe with very mild exertion. After careful review of claimant's extensive medical record and the Administrative Law Judge's personal interaction with claimant at the hearing, this Administrative Law Judge finds 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 department has failed to provide vocational evidence which establishes that claimant has the residual functional capacity for substantial gainful activity and that, given claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which the claimant could perform despite claimant's limitations. Accordingly, this Administrative Law Judge concludes that claimant is 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 claimant met the definition of medically disabled under the Medical Assistance program from December 2005 through July 2007.

Accordingly, the department is ordered to initiate a review of the March 31, 2006 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.

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

Date Signed: 07/14/09

Date Mailed: 07/14/09

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.

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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:

