

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.: 2009-6939  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
February 23, 2009  
Oakland County DHS (4)

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 February 23, 2009. The claimant appeared and testified. The claimant was represented by [REDACTED] of [REDACTED]. Following the hearing, the record was kept open for 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 May 30, 2008, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to April 2008.

- (2) On August 12, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- (3) On November 6, 2008, a hearing request was filed to protest the department's determination.
- (4) Claimant, age 22, has a 10<sup>th</sup> grade education. Claimant received special education services for the emotionally impaired while in school.
- (5) Claimant has had no relevant work experience.
- (6) Claimant has a history of polysubstance dependence.
- (7) Claimant was hospitalized [REDACTED] through [REDACTED] after having been found nonresponsive on the floor of his own home. His left arm was tucked under his body. He was diagnosed with compartment syndrome of the left upper extremity. He underwent a decompression of his compartment syndrome with fasciotomy. He developed acute renal failure requiring hemodialysis.
- (8) Claimant suffers from left upper extremity brachial plexopathy status post compartment release with loss of neurologic function of the left arm with contractures of the left fingers, thumb, hand, and wrist and left wrist drop. Claimant also suffers from hypertension, emotional impairment by history, polysubstance dependence by history, and dependent personality traits.
- (9) Claimant has severe limitations upon his ability to lift, push, pull, reach, carry, and handle as well as limitations responding appropriately to others. Claimant's limitations have lasted for 12 months or more.
- (10) 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.

#### 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, 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 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 (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 claimant has significant physical and mental limitations upon claimant's ability to perform basic work activities such as lifting, pushing, pulling, reaching, carrying, or handling as well 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, claimant has had no past relevant work experience. Accordingly, he 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 your 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 (6<sup>th</sup> 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 a history of polysubstance dependence. On [REDACTED], claimant was found nonresponsive on the floor in his home. His left arm was tucked under his body. He was discovered to have developed compartment syndrome in his left upper extremity and underwent compartment release with fasciotomy. Claimant required wound vac placement and subsequent delay in primary closure. He also developed acute renal failure status post rhabdomyolysis. While hospitalized, he underwent a psychiatric evaluation and was diagnosed with polysubstance dependence including opiates; emotional impairment by history; and dependent personality traits. He was given a current GAF score of 45. EMG testing on [REDACTED] documented left upper extremity brachial plexopathy. On [REDACTED], claimant's treating internist diagnosed claimant with loss of neurologic function of the left arm (brachial nerve palsy), drug addiction, and fatigue. On [REDACTED], claimant's treating orthopedic surgeon documented claimant with left upper extremity brachial plexopathy, status post left deltoid muscle compartment release, and left wrist drop. On [REDACTED], claimant's rehabilitation physical therapist indicated that claimant suffered from fasciotomy of the left upper extremity with weakness of the left hand, wrist, elbow, and shoulder as well as

contractures of the left fingers, thumb, hand, and wrist. At the hearing, in addition to loss of use of his left upper extremity, claimant complained of chronic headaches, fatigue, lack of energy, and depression. 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 meets the definition of medically disabled under the Medical Assistance program as of April 2008.

Accordingly, the department is ordered to initiate a review of the May 30, 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 representative of its determination in writing.

Assuming that claimant is otherwise eligible for program benefits, the department shall review claimant's continued eligibility for program benefits in February 2010.

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

Date Signed: 08/04/09

Date Mailed: 08/06/09

**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

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