

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.: 2009-751  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
December 11, 2008  
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 December 11, 2008. The claimant appeared and testified. The claimant was represented by [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 December 13, 2007, an application was filed on claimant's behalf for MA-P benefits. The application did not request retroactive medical coverage.

- (2) On June 28, 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 19, 2008, a hearing request was filed to protest the department's determination.
- (4) Claimant, age 26, has a 9<sup>th</sup> grade education. Claimant reports receiving special education services for the emotionally impaired from kindergarten through 9<sup>th</sup> grade. Claimant has had no additional education or training.
- (5) Claimant last work in 2005 performing automobile detailing (cleaning cars inside and out). Claimant's relevant work history consists exclusively of unskilled work activities.
- (6) Claimant has a history of attention deficit disorder, substance abuse, withdrawal seizures, and bipolar disorder.
- (7) Claimant was hospitalized [REDACTED] through [REDACTED] as a result of severe rhabdomyolysis after excessive drug use and unresponsiveness which resulted in renal failure. Claimant's discharge diagnosis was acute renal failure, acute liver failure, rhabdomyolysis, substance abuse, myocardial demand ischemia, and tooth abscess.
- (8) Claimant was rehospitalized [REDACTED] through [REDACTED] when he developed a severe headache while in outpatient dialysis. His discharge diagnosis was intractable headache secondary to migraine; hypertension, under control; renal failure on dialysis; left lower lobe atelectasis, resolved; and anemia.
- (9) Claimant was hospitalized [REDACTED] through [REDACTED] for abdominal pain. He underwent a complete workup and was discharged with the final diagnosis of abdominal pain, hypertension, and anxiety.

- (10) Claimant was hospitalized [REDACTED] through [REDACTED] for chest pain. After a workup, his chest pain was thought to be noncardiac.
- (11) Claimant was hospitalized [REDACTED] through [REDACTED] as a result of Vicodin overdose.
- (12) By the time of hearing, claimant was seizure free and had completely recovered from his kidney failure.
- (13) Claimant currently suffers with hypertension and anxiety.
- (14) 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 has the physical and mental capacity to engage in his past employment 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, the 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, 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 limitations upon claimant's ability to perform basic work activities such as use of judgment; responding appropriately to supervision, co-workers, and usual work situations; and dealing with changes in a routine work setting. 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 worked in the past performing automobile detailing. Claimant is a young man who has had difficulties with substance abuse. He also had seizures which were eventually identified as withdrawal seizures and/or anxiety-related pseudo seizures. On [REDACTED], claimant's treating neurologist [REDACTED] indicated that claimant's seizures were due to Xanax withdrawal and Ultram. At the hearing, claimant testified that he has been seizure free. He reported that he has had no further difficulties with kidney failure. Claimant testified that he has experienced some problems with anxiety. Claimant testified at the hearing that he does receive the Adult Medical Program and thus has access to medical treatment and prescriptions. A careful review of the entire hearing record fails to support a finding that claimant is incapable of the physical and mental activities necessary for his past relevant work. Based upon the medical evidence and objective, physical findings, as well as claimant's testimony as to his ability to function in his home and community, the undersigned finds that claimant is indeed capable of past work activities. Accordingly, claimant can 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 decision in this matter is HEREBY, AFFIRMED.

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

Date Signed: 07/21/09

Date Mailed: 07/21/09

**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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