

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.: 2009-2059
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
January 15, 2009
Wayne County DHS (76)

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 January 15, 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 19, 2008, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to February 2008.

- (2) On July 7, 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 3, 2008, a hearing request was filed to protest the department's determination.
- (4) Claimant, age 45, has an 11th grade education.
- (5) Claimant last worked in June 2003 as an assembly line worker. Claimant has also performed relevant work as a dry cleaner counter person/presser. Claimant's relevant work history consists exclusively of unskilled work activities.
- (6) Claimant has a history of chronic anemia and hypertension. Claimant was hospitalized [REDACTED] through [REDACTED]. Her discharge diagnosis was acute left and right-sided congestive heart failure; hypertension; pulmonary hypertension; and anemia. Claimant had an echocardiogram which indicated an ejection fraction of 40%.
- (7) Claimant was hospitalized [REDACTED] through [REDACTED]. Her discharge diagnosis was Thyrotoxic Graves Disease; congestive heart failure exacerbation secondary to Thyrotoxic state; hypertension; and anemia.
- (8) Claimant was re-hospitalized [REDACTED] through [REDACTED]. Her discharge diagnosis was congestive heart failure exacerbation secondary to hyperthyroidism; severe hypothyroidism; hypertension; and anemia.
- (9) Claimant suffers from hypertension; uncompensated congestive heart failure with chronic bilateral lower extremity edema; pulmonary hypertension; hyperthyroidism; and anemia.
- (10) Claimant has severe limitations upon her ability to walk, stand, and lift heavy objects. Claimant's limitations have lasted for 12 months or more.

- (7) Claimant's complaints and allegations concerning her 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 (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 claimant has significant physical limitations upon claimant’s ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, and 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. 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 is not capable of the walking, standing, or lifting required by her past employment. Claimant has presented the required medical data and evidence necessary to support a finding that she is not, at this 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.

Claimant has a history of hypertension and chronic anemia. She was hospitalized [REDACTED] through [REDACTED] with a discharge diagnosis of acute left and right-sided congestive heart failure; hypertension; pulmonary hypertension; and anemia. She was re-hospitalized [REDACTED] through [REDACTED] with a discharge diagnosis of Thyrotoxic Graves Disease; congestive heart failure exacerbation secondary to Thyrotoxic state; hypertension; and anemia. Claimant was again hospitalized on [REDACTED] through [REDACTED] with a discharge diagnosis of congestive heart failure exacerbation secondary to hyperthyroidism; severe hyperthyroidism; hypertension; and anemia. On [REDACTED], claimant's family physician [REDACTED] diagnosed claimant with congestive heart failure, hypothyroidism, anemia, hypertension, pulmonary hypertension, pleural effusion of the right

lung; and chronic bilateral leg edema. The physician indicated that claimant was incapable of lifting any amount of weight or engaging in any standing or walking. The physician further indicated that claimant was incapable of repetitive activities with the upper and lower extremities secondary to continuous respiratory distress and chronic, painful leg swelling and chronic fatigue.

On [REDACTED], the treating physician diagnosed claimant with uncompensated congestive heart failure, hyperthyroidism, anemia, hypertension, pulmonary hypertension, and chronic bilateral leg edema. The physician continued to opine that claimant was incapable of any amount of lifting or any walking and standing. The physician indicated that claimant was incapable of repetitive activities with the upper and lower extremities secondary to uncompensated congestive heart failure, severe fatigue, and weakness. Claimant was noted to have chronically swollen and tender legs. Claimant's status was described as "deteriorating." 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.

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