

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: 2009-3166
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 22, 2009
Wayne County DHS (19)

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 22, 2009. Claimant appeared and testified. Claimant was represented [REDACTED] of [REDACTED], Inc. 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) and State Disability Assistance (SDA) programs from March 2008 through June 2008?

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 25, 2008, an application was filed on claimant's behalf for MA-P and SDA benefits. The application requested MA-P retroactive to March 2008.
- (2) On June 23, 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 denial of claimant's April 25, 2008 application for benefits.
- (4) On August 13, 2008, a new application for MA-P was filed on claimant's behalf. The application requested MA-P retroactive to July 2008.
- (5) Thereafter, on December 26, 2008, the Medical Review Team (MRT) approved claimant's August 13, 2008 application for benefits.
- (6) Thereafter, the department opened MA-P for claimant effective August 2008.
- (7) At the hearing, the department agreed to open MA-P for claimant retroactive to July 2008.
- (8) At the hearing, the parties agreed that the issue in dispute was whether claimant met the disability criteria for MA-P and SDA from March 2008 through June 2008.
- (9) Claimant, age 55, has a high school education.
- (10) Claimant last worked in [REDACTED] as a maintenance worker. Claimant has also had relevant work experience as an auto parts delivery driver. Claimant's relevant work history consists exclusively of unskilled work activities.
- (11) Claimant has a history of chronic ischemic heart disease and moderately severe small vessel ischemic disease of the brain.
- (12) Claimant was hospitalized [REDACTED] to [REDACTED] as a result of pneumonia with an empyema which required lung decortication with therapeutic thoracentesis.

- (13) Upon discharge from the hospital in March 2008, claimant was severely deconditioned and suffered from weakness, fatigue, and limited use of his right, dominate arm following his lung surgery.
- (14) From March 2008 through June 2008, 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 engaging in any substantial gainful activity on a regular and continuing basis.
- (15) In July 2008, claimant suffered from a severe cerebral vascular accident. He was diagnosed with an infarct of the brain stem and cerebellar area with ataxia, dysphagia, and vertigo symptoms.

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 March 2008 through June 2008, claimant was not working. Therefore, claimant may not be disqualified for MA at this step in the sequential evaluation process regarding the time period in question.

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, from March 2008 through June 2008, claimant has significant physical limitations upon his ability to perform basic work activities such as walking, standing, and heavy lifting. 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, March 2008 through June 2008, claimant was not capable of the walking, standing, lifting, or carrying required by his past employment. Claimant has presented the required medical data and evidence necessary to support a finding that he was not, during that time period, 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 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 (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 has a history of chronic ischemic heart disease and moderately severe small vessel ischemic disease of the brain. In March 2008, claimant suffered pneumonia and was hospitalized from [REDACTED] to [REDACTED]. He was found to have an empyema and underwent surgery for a lung decortication with therapeutic thoracentesis. Upon discharge, claimant was severely deconditioned, weak, and fatigued. Claimant had limited use of his

dominate right arm as result of residuals from his lung surgery. The record supports a finding that from March 2008 through June 2008, claimant was so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis. Thus, claimant must be found to have been “disabled” from March 2008 through June 2008.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM Item 261. In as much as claimant has been found “disabled” for purposes of MA from March 2008 through June 2008, claimant must also be found “disabled” for purposes of SDA benefits during that same period.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that, from March 2008 through June 2008, claimant was medically disabled for purposes of the Medical Assistance and State Disability Assistance programs.

Accordingly, the department is ordered to initiate a review of the April 25, 2008 application, if it has not already done so, to determine if all other non-medical eligibility criteria

