

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2010-13221  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date: April 26, 2010  
Wayne County DHS (82)

**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 April 26, 2010, pursuant to remand by the Wayne County Circuit Court. Claimant was represented by [REDACTED]. 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) programs from November of 2007 through April of 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 February 27, 2008, claimant's authorized representative filed an application on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to November of 2007.
2. On December 14, 2009, the Wayne County Circuit Court remanded the matter to the State Office of Administrative Hearings and Rules to conduct a hearing on the issue of claimant's disability regarding the February 27, 2008, application.
3. More recently, the department opened MA-P for claimant effective May 1, 2008, based upon a later application.

4. The issue at hand is whether claimant was “disabled” for purposes of MA-P from November of 2007 through April of 2008.
5. Claimant, age 28, has an eleventh-grade education.
6. Claimant is reported to have last worked in April of 2004 performing unskilled work in food preparation.
7. Claimant has a history of Type I diabetes mellitus since age 18 as well as hypertension and hypothyroidism.
8. Throughout the period in question, claimant has had multiple hospitalizations for Type I diabetes mellitus, poorly controlled; recurrent diabetic ketoacidosis and diabetic gastroparesis.
9. Throughout the period in question, claimant suffered from Type I diabetes mellitus, poorly controlled; recurrent diabetic ketoacidosis; diabetic gastroparesis; hypertension; hypothyroidism; and anemia.
10. During the period in question, claimant had severe limitations upon her ability to walk, stand, lift, carry, and handle objects. Claimant’s limitations have lasted twelve months or more.
11. Throughout the period in question, claimant suffered from diabetes mellitus with acidosis occurring at least on the average of once every two months.
12. Throughout the period from November of 2007 through April of 2008, 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, reflected an individual who was 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 (BAM), the Program Eligibility Manual (BEM) 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, for the period in question, claimant was 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 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 (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.

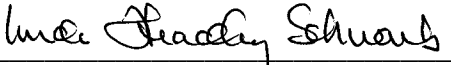
In this case, for the period in question, claimant has presented the required medical data and evidence necessary to support a finding that she had significant physical limitations upon her ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, and handling. Medical evidence has clearly established that, from November of 2007 through April of 2008, claimant had an impairment (or combination of impairments) 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. Based upon the medical record, the undersigned Administrative Law Judge finds that, from November of 2007 through April of 2008, claimant’s impairments met or equaled a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A, Section 9.08B. In this case, claimant was hospitalized multiple times throughout the period in question as a result of poorly controlled Type I diabetes mellitus, recurrent diabetic ketoacidosis, and diabetic gastroparesis. The extensive medical record contains considerable documentation of blood chemical tests to document the recurrent ketoacidosis. Accordingly, claimant must be found disabled for the period in question. Further, the repeated hospitalizations document claimant’s inability to engage in the physical and mental activities necessary for substantial gainful activities on a regular and continuing basis. Accordingly, the undersigned concludes that claimant was “disabled” for purposes of MA from November of 2007 through April of 2008.

**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 November of 2007 through April of 2008.

Accordingly, the department is ordered to initiate a review of the February 27, 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 her authorized representative of its determination in writing.

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

Date Signed: August 4, 2010

Date Mailed: August 6, 2010

**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 Circuit Court within 30 days of the mailing 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/pf

cc:

