

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

IN THE MATTER OF:



Reg. No.: 2010-1463
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 4, 2010
DHS County: Oakland (63-02)

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 4, 2010. Claimant appeared and testified. 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) 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 17, 2008, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to November of 2008.
2. On May 9, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria. A copy of the notice was not sent to claimant's authorized representative.
3. On August 10, 2009, a hearing request was filed to protest the department's determination.
4. Claimant, age 43, has a high-school education.

5. Claimant last worked in March of 2009 as a furniture sales person. Claimant has also performed relevant work as a forklift operator and limo driver.
6. Claimant has a history of dyslipidemia, asthma, obesity, and substance/tobacco abuse.
7. Claimant was hospitalized [REDACTED] as a result of sudden onset of chest pain. An echocardiogram documented a tumor on the right atrium which was diagnosed as a calcified myxoma.
8. Claimant was hospitalized [REDACTED], at which time he underwent aortic valve replacement.
9. Claimant was hospitalized [REDACTED] following complaints of chest pain. He underwent a cardiac catheterization which demonstrated a well functioning aortic valve replacement with no aortic insufficiency, dilation, or dissection. Non-critical coronary artery disease was noted. It was determined that claimant should be treated medically.
10. Claimant was hospitalized [REDACTED] as a result of chest pain. An echocardiogram was normal and it was determined that claimant's chest pain was likely costochondritis. Claimant's discharge diagnosis was atypical chest pain, likely costochondritis; status post mechanical aortic valve replacement in [REDACTED]; diabetes mellitus at goal; hypertension at goal; asthma; therapeutic INR and dyslipidemia.
11. Claimant currently suffers from bronchial asthma associated with chronic obstructive pulmonary disease (a pulmonary function test of [REDACTED], demonstrated early signs of small airway obstruction with no significant improvement following administration of a bronchodilator); history of aortic valve replacement; dyslipidemia; hypertension – controlled; and diabetes mellitus – controlled by diet.
12. Claimant has severe limitations upon his ability to engage in lifting extremely heavy objects and heavy physical exertion. Claimant's limitations have lasted or are expected to last twelve months or more.
13. Claimant is capable of meeting the physical and mental demands associated with his past employment as well as other forms of light work on a regular and continuing basis.
14. Claimant has been receiving Unemployment Compensation benefits since August of 2008 and continued to receive benefits through the date of the hearing. Claimant acknowledged that he was actively seeking employment.

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 general, 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 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 he has significant physical limitations upon his ability to perform basic work activities such as lifting extremely heavy objects. 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).

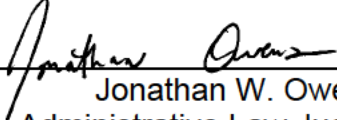
In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past

relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical findings, that claimant is capable of this past work. In this matter, claimant was hospitalized in November of 2008. It was discovered, via echocardiogram, that claimant had a tumor on the right atrium which was diagnosed as a calcified myxoma. On [REDACTED], claimant underwent aortic valve replacement. Claimant was re-hospitalized [REDACTED] following complaints of chest pain. A stress test and cardiac catheterization were normal with findings of no significant coronary artery disease. Claimant was hospitalized [REDACTED] with complaints of chest pain. Claimant was diagnosed with atypical chest pain, likely costochondritis. Claimant was seen by a consulting internist for the department on [REDACTED]. A pulmonary function test revealed early signs of small airway obstruction with no marked improvement following administration of a bronchodilator. Although claimant has had an aortic valve replacement, stress tests and cardiac catheterizations have been essentially normal and no significant coronary artery disease has been detected. Claimant's hypertension and diabetes mellitus are under control. His pulmonary function test from [REDACTED] documented early small airway obstruction. After careful review of the entire hearing record, the undersigned finds that claimant is capable of past work activities. Accordingly, the department's determination in this matter is hereby affirmed.

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's determination in this matter is hereby affirmed.



Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 15, 2010

Date Mailed: December 20, 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.

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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.

JWO/pf

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