

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2010-1758
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: November 18, 2009
DHS County: Wayne (49)

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 November 18, 2009. Claimant appeared and testified. Claimant was represented by [REDACTED]. Following the hearing, the record was kept open for the receipt of additional medical evidence. No additional documents were submitted.

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 October 19, 2007, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to July of 2007.
2. On May 21, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
3. On August 28, 2009, a hearing request was filed to protest the department's determination.
4. Claimant, age 46, has an eleventh-grade education.

5. Claimant last worked in 2007 as a janitor performing commercial cleaning services. Claimant has had no other relevant work experience. Claimant's relevant work history consists exclusively of unskilled work activities.
6. Claimant has a history of hypertension and systolic heart failure.
7. Claimant was hospitalized [REDACTED] following multiple gunshot wounds to the abdomen and lower extremities. Claimant's injuries resulted in left nephrectomy with right uretral stenting, small bowel resection, and colon resection. Claimant suffered peroneal nerve damage resulting in right footdrop.
8. Claimant was hospitalized [REDACTED] as a result of right uretral obstruction. Claimant underwent a cystogram and retrograde pyelogram with stent insertion.
9. Claimant was re-hospitalized [REDACTED] secondary to right uretral obstruction. His discharge diagnosis was acute renal failure, chronic kidney disease, hydronephrosis, urinary tract infection due to stent infection, and anemia of iron deficiency. Claimant was noted to suffer from right footdrop secondary to peroneal nerve damage.
10. Claimant was hospitalized [REDACTED] as a result of a failed primary repair of his right uretral injury. He underwent a right uretral re-implantation procedure. He was discharged with a Foley catheter and indwelling uretral stent.
11. Claimant currently suffers from a history of multiple gunshot wounds to the abdomen and lower extremities resulting in left nephrectomy, small bowel resection, colon resection, and paroneal nerve damage; right footdrop secondary to paroneal nerve damage; chronic kidney disease; and hypertension.
12. Claimant has severe limitations upon his ability to walk, stand, lift, push, pull, reach, carry, and handle. Claimant's limitations have lasted or are expected to last twelve months or more.
13. 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 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 (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, 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 walking, standing, lifting, pushing, pulling, reaching, carrying, or 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 findings, that claimant is not capable of the walking, standing, lifting, carrying, pushing, pulling, reaching, or handling required by his past work as a janitor. Claimant has presented the required medical data and evidence necessary to support a finding that he 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.

In this case, claimant suffered from multiple gunshot wounds in [REDACTED] to the abdomen and lower extremities. His injuries included left renal pelvis injury, cecal and descending colon, and multiple small bowel injuries. He underwent a left nephrectomy and resection of the bowel. Following initial surgery, he remained anuric. A cystogram demonstrated extraperitoneal bladder injury. He returned to the operating room and had placement of a uretral stent in the right and repair of an extraperitoneal bladder injury. He returned to the operating room several more times and had anastomosis, partial colectomy, placement of G-J feeding tube, placement of drain, and abdominal wall closure. Thereafter, claimant had several returns to the hospital as a result of problems with his right uretral stent. Eventually, his right uretral repair was declared a failure and he underwent a right uretral re-implantation. Claimant was seen by a consulting physician for the department on [REDACTED]. The consultant provided the following impression:

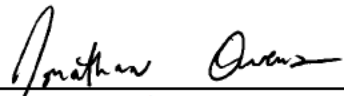
1. GUNSHOT WOUND: The examinee has a history of multiple gunshot wounds in [REDACTED], which affected his left thigh, right thigh, and right lower extremity, causing peroneal nerve damage and right footdrop. He has back pain, bladder surgery, and removal of his left kidney. He states he also had rectal reconstructive surgery.
2. HYPERTENSION: The examinee has a history of hypertension, currently on no medication. He does need immediate management for that problem.

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.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant meets the definition of medically disabled under the Medical Assistance program as of July of 2007.

Accordingly, the department is ordered to initiate a review of the October 19, 2007, 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 his authorized representative of its determination in writing. Assuming that claimant is otherwise eligible for program benefits, the department shall review claimant's continued eligibility for program benefits in June of 2011.



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

Date Signed: December 13, 2010

Date Mailed: December 14, 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.

JWO/pf

cc:

