

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

IN THE MATTER:

[REDACTED]

Reg No. 201032030
Issue No. 2009
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: May 20, 2010
Berrien County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on May 20, 2010. Claimant and his sister personally appeared and testified.

ISSUE

Did the department properly deny claimant's February 17, 2010 Medicaid (MA) application, based on a finding he lacks a legally disabling condition?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds a material fact:

1. On February 17, 2010, claimant applied for disability-based medical coverage (MA) at age [REDACTED].
2. When the department denied that application claimant filed a timely hearing request to protest the denial, held by conference telephone on May 20, 2010.
3. Claimant is a single, former smoker with a high school equivalency education (GED) who has lived with his sister since his mother died in 2002.

4. Claimant moved back to [REDACTED] from [REDACTED] in 2001 to care for his ailing mother; he has not been employed since leaving that state.
5. Claimant's past relevant employment history consists of fast-food restaurant work in [REDACTED] and before that, working as a machine press operator (Department Exhibit #1, pg 143).
6. Claimant stands approximately 5'10" tall and weighs approximately 183 pounds; he is right hand dominant, per self report (Department Exhibit #1, pg 145).
7. Claimant's remote medical history confirms a previous stroke; he still exhibits some slight, right lower extremity residuals, including mild hyperreflexia, mild weakness and a slight, right-sided limp without need for an ambulatory device, according to an independent medical examination performed on June 26, 2010 (Department Exhibit #2, pgs 5 and 58).
8. Recently claimant underwent a laproscopic, left radical nephrectomy in April 2010 secondary to contained renal cell carcinoma (G2) confirmed via the post-surgical pathology report (Department Exhibit #2, pgs 18 and 19).
9. Claimant spent approximately one week in the hospital; at discharge on April 28, 2010, he was feeling well with adequate pain control and stable blood pressure readings, per the hospital's discharge summary (Department Exhibit #2, pg 9).
10. At claimant's disability hearing on May 20, 2010, he stipulated he has remained cancer-free without need of further treatment.
11. Claimant's medical records verify longstanding Chronic Obstructive Pulmonary Disease (emphysema)(Department Exhibit #2, pgs 110 and 111).
12. According to the independent medical examination performed in June 2010, obstruction of air flow was demonstrated by poor breath sounds and respiratory excursion despite a fairly extensive medical regimen which includes multiple bronchodilators (inhalers) with use of a breathing machine four times daily, as prescribed.
13. Additionally, the chest x-rays taken during claimant's April 2010 hospitalization confirm bibasilar atelectasis (Department Exhibit #2, pg 38)

14. Claimant reports extreme shortness-of-breath upon minimal exertion, as well as ongoing post-surgical stomach pain, fatigue and insomnia (See Finding of Fact #8 and #9 above).
15. Additionally, just before claimant's left radical nephrectomy surgery (kidney removal) he sought Emergency Room (ER) treatment for a COPD exacerbation on April 12, 2010 (Department Exhibit #2, pgs 58-60).
16. Claimant's ER report confirms COPD, and also, diagnoses obstructive sleep apnea; a sleep study has been recommended which claimant has not obtained due to lack of medical coverage (Department Exhibit #2, pg 60)(See also Finding of Fact #1 above).

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...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

The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental

health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

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 has not been employed in several years; consequently, the analysis must continue.

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 claimant has significant physical limitations upon his ability to perform basic work activities.

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 physically incapable of performing his past relevant work because that work consisted of medium and heavy exertional activities which are precluded by his severe COPD.

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.

After careful review of claimant's extensive medical records 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. Consequently, the department's denial of his February 17, 2010 MA application cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining claimant is not currently legally disabled..

Accordingly, the department's decision is REVERSED, and it is Ordered that:

- 1) The department shall process claimant's February 17, 2010 MA application and shall award him all of the benefits to which he may be entitled, as long as he meets the remaining financial and non-financial eligibility factors.
- 2) The department shall review claimant's condition for improvement in December 2012.

- 3) The department shall obtain updated medical evidence from claimant's treating sources regarding his treatment, progress and prognosis at review, unless he is approved eligible for Social Security disability benefits by that time.

/s/
Marlene B. Magyar
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: November 22, 2010

Date Mailed: November 23, 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 receipt 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.

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