

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.: 2010-33310
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: June 16, 2010
DHS County: Wayne (49)

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 June 16, 2010. Claimant appeared and testified. Claimant was represented at the hearing 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 November 23, 2009, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to August of 2009.
2. On January 29, 2010, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
3. On April 26, 2010, a hearing request was filed to protest the department's determination.
4. Claimant, age 53, has a tenth-grade education. Claimant reported having some difficulty with reading and writing.

5. Claimant's last relevant work was performed in 2003 or 2004 as a car wash attendant. Claimant has also performed work as a general maintenance worker, janitor, and "tear down man." Claimant's relevant work history consists exclusively of unskilled work activities.
6. Claimant has a history of insulin-dependent diabetes mellitus, seizures, hypertension, coronary artery disease, chronic back and leg pain secondary to a fall, substance abuse, and an aortic valve replacement in [REDACTED] secondary to endocarditis.
7. Claimant was hospitalized [REDACTED] for hypertensive urgency, chronic kidney disease, and diabetes mellitus.
8. Claimant was hospitalized [REDACTED] for diabetic ketoacidosis, hypertension, hyperkalemia, acute on chronic renal failure, and leukocytosis.
9. Claimant was hospitalized [REDACTED] for uncontrolled diabetes, hypertension, acute renal failure, dehydration, and non compliance.
10. Claimant was hospitalized in [REDACTED] for uncontrolled diabetes and substance abuse.
11. Claimant was hospitalized [REDACTED] as a result of acute abdominal pain, resolved; chronic pancreatitis; status post aortic valve replacement; and hypertension.
12. Claimant was hospitalized [REDACTED] as a result of altered mental status secondary to opiate intoxication, hypertensive urgency, atypical chest pain, and seizure disorder.
13. Claimant currently suffers from insulin-dependent diabetes mellitus, chronic kidney disease, hypertension, hyperlipidemia, seizure disorder, opiate dependence, recurrent major depression, cognitive disorder (full-scale IQ of 62), and mixed personality disorder with antisocial and dependent features. Claimant's GAF score in [REDACTED] was 48.
14. Claimant has severe limitations upon his ability to walk, stand, lift, and carry as well as memory, judgment, ability to respond appropriately to others and deal with change. Claimant's limitation have lasted or are expected to last 12 months or more.
15. 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.

16. Following the hearing, it was learned that, on June 11, 2010, a new hearing request had been filed on claimant's behalf by [REDACTED] to protest the department's denial of claimant's December 3, 2009, application for MA-P. Thereafter, [REDACTED] agreed to defer to the instant hearing and submitted additional medical documentation for consideration by the undersigned Administrative Law Judge.

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 and mental limitations upon his ability to perform basic work activities such as prolonged walking, standing, and heavy lifting; understanding, carrying out, and remembering simple instructions; use of judgment; responding appropriately to others; and dealing with change. 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.

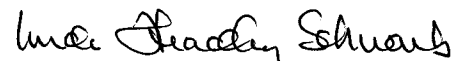
In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant’s impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. After careful consideration of the entire hearing record, the undersigned finds that claimant’s impairments meet or equal a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A, Section 12.05C. Medical evidence has established that claimant has a valid IQ score of 60 to 70 and as he has an additional impairment (other than mental retardation) it meets the “severity” standard. The “severity” step of the sequential evaluation analysis is a threshold inquiry which allows only “claims based on the most trivial impairments to be rejected.” Claimant’s burden of showing severity is *mild*. A claimant “need show only that (his or her) impairment is not so slight and its effect is not so minimal.” *McDaniel v Bowen*, 800

F2d 1026, 1031 (11 CA, 1986). An impairment is not severe if it is a slight abnormality which has such a minimal effect on the individual that it would not be expected to interfere with the individual's ability to work, irrespective of age, education, or work experience. *Brady v Heckler*, 724 F2d 914, 920 (11 CA, 1984). In this case, claimant was seen by a consulting psychologist for the [REDACTED] on [REDACTED] 0. Following testing, the consultant concluded that "the patient's intellectual functioning was measured to lie in the mildly retarded range, with a verbal IQ of 67, performance IQ of 62, and full scale IQ of 62 ..." The consultant diagnosed claimant with opiate dependence, in reported three to four year remission; major depression, recurrent, moderate, with psychotic features; and cognitive disorder, NOS. The psychologist gave claimant a current GAF score of 48. Claimant has major depression and his frequent hospitalizations document additional impairments which have more than a minimal affect upon claimant's ability to function. The medical record clearly establishes that, in addition to intellectual deficits, claimant has severe impairments which impose additional and significant work-related limitations of function. Accordingly, the undersigned finds 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 August of 2009.

Accordingly, the department is ordered to initiate a review of the November 23, 2009, and the December 3, 2009, applications, 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 representatives 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 August of 2011.



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

Date Signed: September 7, 2010

Date Mailed: September 7, 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:

