

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.: 2010-39688
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: August 2, 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 August 2, 2010. Claimant testified in the proceeding via telephone conference call from the [REDACTED]. Claimant was represented by [REDACTED].

ISSUE

Did the Department of Human Services (DHS or department) properly determine that claimant was not "disabled" for purposes of the Medical Assistance (MA-P) during the period from October of 2009 through February of 2010?

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 January 8, 2010, claimant filed an application for MA-P benefits. Claimant requested MA-P retroactive to October of 2009.
2. On March 13, 2010, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
3. On June 9, 2010, a hearing request was filed to protest the department's determination.
4. Thereafter, based upon a subsequent application, the Medical Review Team approved MA-P for claimant retroactive to March of 2010.

5. At the hearing, the parties agreed that the issue in dispute was whether claimant met the disability criteria for purposes of MA-P from October of 2009 through February of 2010.
6. Claimant, age 57, has a high-school education.
7. Claimant last worked in 2008 as a clerical worker. Claimant has had no other relevant work experience.
8. Claimant has a history of diabetes mellitus, asthma, hypertension, and hyperlipidemia.
9. Claimant was hospitalized [REDACTED] as a result of severe cellulitis of the bilateral lower extremities. Her discharge diagnosis was bilateral lower extremity cellulitis, right leg ulcer, diabetes mellitus, hypertension, hyperlipidemia, and asthma.
10. Claimant continued to struggle with bilateral lower extremity cellulitis until she was re-hospitalized on [REDACTED]. At discharge on [REDACTED], claimant was diagnosed with bilateral cellulitis, non-compliance with medication (secondary to lack of insurance), hypertension, asthma, chronic obstructive pulmonary disease, diabetes mellitus, hyperlipidemia, and possible candidiasis on the truncal rash.
11. Claimant has been in a nursing home facility from [REDACTED], through the time of the hearing. At the time of placement in the nursing home, claimant was said to suffer from general debility and muscle weakness, balance and transfer deficits, gait dysfunction, severe cellulitis of the lower extremities, and uncontrolled diabetes.
12. From October of 2009 through February of 2010, claimant had severe limitations upon her ability to walk, stand, lift, carry, and handle.
13. From October of 2009 through February of 2010, 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, from October of 2009 through February of 2010, claimant was not working. Therefore, claimant may not have been 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, from October of 2009 through February of 2010, claimant had significant physical limitations upon her ability to perform basic work activities such as walking, standing, lifting, reaching, carrying, and handling. Medical evidence has clearly established that 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. This Administrative Law Judge finds that the claimant’s medical record will not support a finding that claimant’s impairment(s) was 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, from October of 2009 through February 2010, claimant was not capable of the her past work as a clerical employee. Claimant has presented the required medical data and evidence necessary to support a finding that she was not, at that 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.

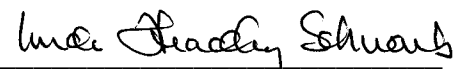
See *Felton v DSS*, 161 Mich. App 690, 696 (1987). Once claimant reaches Step 5 in the sequential review process, claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof 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 was hospitalized in [REDACTED] for severe cellulitis of the bilateral lower extremities. The record supports a finding that, following release from the hospital on [REDACTED] claimant continued to suffer with severe cellulitis of the bilateral lower extremities through [REDACTED]. After careful review of claimant's extensive medical record the undersigned finds that claimant's exertional impairments during the period from October of 2009 through February of 2010 rendered 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 failed to provide vocational evidence which established that claimant had the residual functional capacity for substantial gainful activity and that, given claimant's age, education, and work experience, there were significant numbers of jobs in the national economy which the claimant could have performed despite claimant's limitations. Accordingly, this Administrative Law Judge concludes that claimant was disabled for purposes of the MA program from October of 2009 through February of 2010.

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 from October of 2009 through February of 2010.

Accordingly, the department is ordered to initiate a review of the January 8, 2010, 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.



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:

