

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

IN THE MATTER OF:



Reg. No.: 2010-9282  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date: March 15, 2010  
DHS County: Wayne (82)

**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 March 15, 2010. Claimant is deceased. Claimant's representative appeared and testified.

**ISSUE**

Whether the Department of Human Services (DHS or department) properly determined 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 a material fact:

1. On June 29, 2009, Claimant's representative applied for MA-P and retro MA-P.
2. On August 6, 2009, the Medical Review Team (MRT) denied Claimant's request.
3. On October 13, 2009, Claimant's representative submitted to the Department a request for hearing.
4. Claimant was 53 years old.
5. Claimant had a high school education.
6. Claimant had no listed employment history in the evidence submitted for consideration.

7. Claimant's representative alleged disability based on Claimant's alcohol and drug overdose.
8. Claimant died on [REDACTED], due to cardio-respiratory failure, hypoxic encephalopathy and drug overdose.

### **CONCLUSIONS OF LAW**

The Medical Assistance (MA-P) 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 administers the MA-P 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 is 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 impairment(s); residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

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, under the first step, Claimant is not working.

Second, 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 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. The court in *Salmi v Sec’y of Health and Human Servs*, 774 F2d 685 (6<sup>th</sup> Cir 1985) held that an impairment qualifies as “non-severe” only if it “would not affect the claimant’s ability to work,” “regardless of the claimant’s age, education, or prior work experience.” *Id.* at 691-92. Only slight abnormalities that minimally affect a claimant’s ability to work can be considered non-severe. *Higgs v Bowen*, 880 F2d 860, 862 (6<sup>th</sup> Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F2d 85, 90 (6<sup>th</sup> Cir 1985).

In this case, Claimant has failed to present medical evidence which would support a finding that he did, in fact, have a severe impairment. Claimant was diagnosed with alcohol and drug overdose. No other diagnosed conditions are listed other than those caused directly by the alcohol and drug overdose itself.

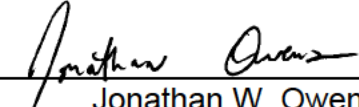
Social Security Rule 82-60 states: “drug addicts or alcoholics cannot be considered “disabled” on the basis of that diagnosis alone.”

The medical evidence submitted has not established an impairment (or combination of impairments) that has an effect on Claimant’s work activities. Therefore, Claimant is denied at step 2 as not having a severe impairment.

**DECISION AND ORDER**

This Administrative Law Judge, based on the findings of fact and conclusions of law, decides that Claimant is not "disabled".

Accordingly, the department's decision in this matter is AFFIRMED.

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

Date Signed: October 6, 2010

Date Mailed: October 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.

JWO/pf

cc:

