

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No.: 2010-1372
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
November 23, 2009
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 November 23, 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. 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 December 29, 2008, the first page of an application for benefits was filed with the department by claimant's authorized representative (A.R.). Per PAM Item

105, p. 1, claimant's A.R. sought to "lock in" a December of 2008 application so that MA retroactive to September of 2008 could be obtained.

- 2) On January 30, 2009, claimant's A.R. filed a complete application with the department.
- 3) On April 22, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 4) On July 20, 2009, a hearing request was filed to protest the department's determination.
- 5) Claimant, age 56, has a tenth-grade education.
- 6) Claimant last worked in 1992 as a landscape laborer. Claimant has also performed work as a construction laborer, painter, and stock person. Claimant's relevant work history consists exclusively of unskilled work activities.
- 7) Claimant has a history of alcohol abuse.
- 8) Claimant was hospitalized [REDACTED] as a result of a C2 fracture. Claimant was stabilized in a halo-vest orthosis.
- 9) Claimant was placed in a nursing home from [REDACTED] [REDACTED].
- 10) The most recent CT of the cervical spine performed on [REDACTED], documents probable chronic fracture, Type II dens; multi-level severe degenerative changes with mild to moderate canal stenosis at C3-C4 and C4-C5; and fusion of the C-5 and C6 vertebrae.
- 11) Claimant currently suffers from chronic fracture of C2 with multi-level severe degenerative changes and mild to moderate canal stenosis at C-3-C4 and C4-C5;

cervical kyphosis at C2-C3; and marked cervical spondylosis at multiple levels involving the subaxial spine. Claimant suffers from chronic neck pain and upper left extremity numbness.

- 12) Claimant has severe limitations upon his ability to walk, stand, sit, lift, carry, reach, and handle. Claimant's limitations have lasted 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 (PAM), the Program Eligibility Manual (PEM) 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, sitting, 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.

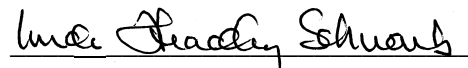
In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant’s impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Based upon the hearing record, the undersigned finds that claimant’s impairments meet or equal a “listed impairment.” As a guide, see Appendix 1 of Subpart P of 20 CFR, Part 404, Part A, Section 1.04C. In this case, claimant suffered a fracture of C2 in [REDACTED]. The hearing record supports a finding that claimant suffers from chronic non-healed Type II odontoid fracture. On [REDACTED], claimant’s treating neurologist opined that claimant has cervical kyphosis at C2-C3 with marked cervical spondylosis at multiple levels involving the subaxial spine. The most recent CT of the cervical spine on [REDACTED] [REDACTED], suggests a chronic fracture, Type II dens; multi-level severe degenerative changes with mild to moderate canal stenosis at C3-C4 and C4-C5 and fusion of the C5 and C6 vertebrae.

Due to the chronic fracture of claimant's cervical spine, claimant meets or equals a listing. Accordingly, it is the finding of this Administrative Law Judge that claimant is presently 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 September of 2008.

Accordingly, the department is ordered to initiate a review of the December 29, 2008, 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 January of 2011.


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

Date Signed: April 27, 2010

Date Mailed: April 28, 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:

