

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

IN THE MATTER OF:



Reg. No.: 2010-25802  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date: May 10, 2010  
DHS County: Macomb (20)

**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 May 10, 2010. 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 May 8, 2009, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to April of 2009.
2. On November 19, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
3. On February 16, 2010, a hearing request was filed to protest the department's determination.
4. Claimant, age 48, has ninth-grade education with special education services. Claimant is functionally illiterate. (See Exhibit A, p. 9.)
5. Claimant has no relevant work experience.

6. Currently, claimant is a recipient of Supplemental Security Income based upon an application of March 15, 2010.
7. Claimant has a history of alcohol abuse, tobacco addiction, seizure disorder, and left ankle fracture with open reduction and internal fixation.
8. Claimant was hospitalized [REDACTED]. His discharge diagnosis was acute alcohol withdrawal, alcohol and tobacco addiction, thrombocytopenia, gout, history of seizures, hypertension, neuropathy, hyponatremia, hypokalemia, and hypomagnesemia.
9. Claimant was hospitalized [REDACTED]. His discharge diagnosis was acute alcohol withdrawal with seizure and chronic alcohol, chronic tobacco.
10. Claimant was hospitalized [REDACTED] with a discharge diagnosis of acute alcohol intoxication, thrombocytopenia, and history of seizure disorder.
11. Claimant was hospitalized [REDACTED]. His discharge diagnosis was multisystem trauma, possibly pedestrian vs auto, blunt head trauma with concussive syndrome; acute seizure activity, possibly DTs secondary to blunt trauma; acute vent dependent respiratory failure secondary to seizure for airway protection; scalp laceration; history of alcohol abuse; multiple abrasion; and history of brain aneurysm.
12. Claimant was hospitalized [REDACTED]. His discharge diagnosis was status post fall with facial laceration, delirium tremens, seizure, chronic alcohol abuse, and hypokalemia.
13. Claimant was hospitalized [REDACTED]. His discharge diagnosis was status post fall from standing secondary to seizure, blunt head trauma, left upper lip laceration, ETOH abuse, hypertension, seizure disorder, sinus tachycardia, history of cerebral aneurysm, and subtherapeutic Dilantin level.
14. Claimant was hospitalized [REDACTED]. His discharge diagnosis was delirium tremens, chronic alcohol abuse, urinary tract infection, seizure disorder, history of noncompliance, hypokalemia, and lower extremity ulcers.
15. Claimant was hospitalized [REDACTED]. His discharge diagnosis was bilateral toe/foot gangrene secondary to chronic frostbite with blisters, seizure disorder, and chronic alcohol abuse.

16. On [REDACTED], claimant was transferred to [REDACTED] where he remains to date.
17. Claimant currently suffers from alcohol dependence, severe and chronic; primary seizure disorder with ETOH withdrawal seizures; history of gangrene of the bilateral toes and feet secondary to frostbite; chronic obstructive pulmonary disease; learning disability NOS, and encephalopathy-agitation.
18. Claimant has severe limitations upon his ability to walk, stand, lift, push, pull, reach, carry, and handle as well as limitations upon memory, use of judgment, responding appropriately to others, and dealing with change. Claimant's limitations have lasted or are expected to last twelve months or more.
19. 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 (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 (6<sup>th</sup> 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 walking, standing, lifting, pushing, pulling, reaching, carrying, or handling; understanding, carrying out, and remembering simple instructions; use of judgment; responding appropriately to supervision, co-workers, and usual work situations; and dealing with changes in a routine work setting. 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). In this matter, the record supports a finding that claimant has had no relevant work experience. Accordingly, claimant may not be eliminated from MA at this step in the sequential evaluation process.

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 (6<sup>th</sup> 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 has a history of alcohol dependence, severe and chronic, as well as a seizure disorder, learning disability, and history of multiple head traumas secondary to seizures. While placed in the nursing home, claimant has been treated for encephalopathy-agitation.

After careful review of claimant's extensive medical record 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

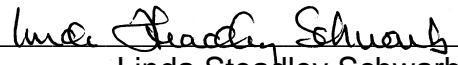
work experience, there are significant numbers of jobs in the national economy which the claimant could perform despite claimant's limitations. Accordingly, this Administrative Law Judge concludes that claimant is disabled for purposes of the MA program.

The record supports a finding that claimant suffers from severe and chronic alcohol dependence. Section 105 of Public Law 104-121 revised the Social Security Act to eliminate drug addiction and alcoholism (DAA) as a basis of disability eligibility when DAA is "material" to the disability determination. 42 USC, Section 423(d)(2)(c), 1382c(a)(2)(J). The burden of proof is upon the department to show "materiality" or that claimant would not be disabled if substance abuse were to terminate. A finding that DAA is material will be made only when the evidence establishes that an individual would not be disabled if he or she stopped using drugs/alcohol. Given the record, this adjudicator cannot project what limitations would remain if claimant's substance abuse were to entirely cease. The record does not support a finding that claimant's limitations would improve such that he would be capable of substantial gainful activity. As such, the record will not support a finding that claimant's substance abuse is material to his disability. Accordingly, the department's determination in this matter must be reversed.

### **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 April of 2009.

Accordingly, the department is ordered to initiate a review of the May 8, 2009, 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.

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

Date Signed: September 8, 2010

Date Mailed: September 10, 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:

