

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.: 2010-29746  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date: June 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 June 2, 2010. Claimant participated in the hearing via a telephone conference call from [REDACTED]. 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**

Was claimant "disabled" for purposes of the Medical Assistance (MA-P) program in December of 2009?

**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 March 12, 2010, claimant filed an application for MA-P benefits. Claimant requested MA-P retroactive to December of 2009.
2. On March 26, 2010, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
3. On March 25, 2010, a hearing request was filed to protest the department's determination.
4. Claimant, age 59, has a high-school education.

5. Claimant last worked in March of 2009 as a school janitor. Claimant has also performed relevant work as a crane operator, postal letter sorter, and as an assembly line worker. Claimant's relevant work history consists exclusively of unskilled work activities.
6. Claimant has a history of hypertension and peripheral artery disease.
7. Claimant was hospitalized [REDACTED]. He underwent a right femoral posterior tibial bypass.
8. Claimant was hospitalized [REDACTED] for right lower extremity wound infection as well as hypertension and peripheral vascular disease.
9. Claimant was hospitalized [REDACTED] for non-healing ulcer of the right leg. He received a partial fibulectomy as well as underwent percutaneous angioplasty of the right greater saphenous vein.
10. Claimant was hospitalized [REDACTED] for management of chronic osteomyelitis.
11. Subsequent to the hearing, the Medical Review Team, based upon an April 30, 2010, application, found claimant to be "disabled" for purposes of MA retroactive through January of 2010.
12. The remaining question is whether claimant was "disabled" for purposes of MA-P in [REDACTED].
13. Claimant's complaints and allegations concerning his impairments and limitations in [REDACTED], when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who was so impaired as to have been 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 was not working in [REDACTED]. 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, in [REDACTED], claimant had 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 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, in [REDACTED], 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 claimant was not capable of performing his past work in December of 2009. Claimant has presented the required medical data and evidence necessary to support a finding that he 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 (6<sup>th</sup> Cir,

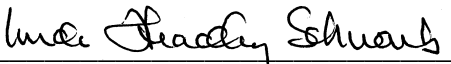
1984). At that point, the burden of proof is on the state to prove by substantial evidence that the claimant has the residual functional capacity for substantial gainful activity.

In this case, claimant was hospitalized in [REDACTED] as a result of his ongoing problems with peripheral artery disease. He underwent a right femoral posterior tibial bypass. Unfortunately, claimant developed an infection and had ongoing problems with numerous hospitalizations. Eventually, the Medical Review Team approved claimant for purposes of MA-P benefits retroactive to January of 2010. Given that claimant was hospitalized for more than half of [REDACTED], the record supports a finding that claimant was "disabled" for purposes of the MA program in [REDACTED]. After careful review of claimant's extensive medical record, this Administrative Law Judge finds that claimant's exertional impairments in [REDACTED] 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 has failed to provide vocational evidence which establishes that claimant had the residual functional capacity in [REDACTED] 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 his limitations. Accordingly, this Administrative Law Judge concludes that claimant was disabled for purposes of the MA program in [REDACTED].

#### **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 in [REDACTED].

Accordingly, the department is ordered to initiate a review of the March 12, 2010, application, if it has not already done so, to determine if all other non medical eligibility criteria were met for the month of [REDACTED]. The department shall inform claimant and his authorized 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:

