

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.: 2010-37742  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date: July 8, 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 July 8, 2010. Claimant appeared and testified. 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) program from October of 2009 through January 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 25, 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 May 24, 2010, a hearing request was filed to protest the department's determination.
4. Based upon a subsequent application of March 11, 2010, the Medical Review Team approved and the department opened MA-P for claimant effective February 1, 2010.

5. Per agreement of the parties, the issue in dispute is whether claimant was “disabled” for purposes of MA-P benefits from October of 2009 through January of 2010.
6. Claimant, age 53, has an eleventh-grade education.
7. Claimant last worked in October of 2008 as metal finisher.
8. Claimant has a history of hypertension, atrial fibrillation, coronary artery disease with hypercholesterolemia, congestive heart failure, and gastroesophageal reflux disease.
9. Claimant was hospitalized in [REDACTED] with complaints of chest pain. A heart catheterization documented severe left ventricular dysfunction with an ejection fraction of 25% and regional wall motion abnormality, moderate pulmonary hypertension, and impaired left ventricular compliance.
10. Claimant was again hospitalized in [REDACTED]. Heart catheterization documented non-ischemic cardiomyopathy with severe left ventricular dysfunction and elevated left ventricular end-diastolic pressure.
11. Claimant’s complaints and allegations concerning his impairments and limitations for the period from October of 2009 through January of 2010, 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 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 was not working from October of 2009 through January of 2010. Therefore, for that period of time, claimant may not be disqualified for MA in the first 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 had significant physical limitations upon his ability to perform basic work activities from October of 2009 through January of 2010 such as walking, standing, 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. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) was, during the period in question, 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) prevented claimant from doing past relevant work during the period in question. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings, that claimant was not capable of the walking, standing, lifting, or carrying as required by his past employment. Claimant has presented the required medical data and evidence necessary to support a finding that he was not, from October of 2009 through January of 2010, 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.

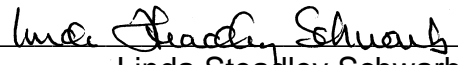
See *Felton v DSS*, 161 Mich. App 690, 696 (1987). Once claimant reaches Step 5 in the sequential review process, claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6<sup>th</sup> Cir, 1984). At that point, the burden 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] for shortness of breath. Cardiac catheterization documented severe left ventricular dysfunction with an ejection fraction of 25% and regional wall motion abnormalities as well as moderate pulmonary hypertension and impaired left ventricular compliance. Claimant was re-hospitalized in [REDACTED]. A cardiac catheterization in February documented non-ischemic cardiomyopathy with severe left ventricular dysfunction and elevated left ventricular end-diastolic pressure. The department has acknowledged that claimant was "disabled" for purposes of MA-P benefits effective [REDACTED]. When comparing medical evidence for claimant during the period of October of 2009 through January of 2010 with medical evidence as to claimant's status as of February 2010, the undersigned Administrative Law Judge finds that claimant's severe physical impairments did exist in October of 2009. The cardiac catheterization in [REDACTED] was strikingly similar to the cardiac catheterization in [REDACTED]. The record does not support a finding that claimant suddenly became disabled on February 1, 2010. The undersigned must find that claimant's disability existed as of October of 2009. Accordingly, the department's determination in this matter is hereby reversed.

### **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 program from October of 2009 through January of 2010.

Accordingly, the department is ordered to initiate a review of the January 25, 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 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 August of 2011.

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

Date Signed: July 20, 2010

Date Mailed: July 23, 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:

