

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.: 2010-37860
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: July 12, 2010
Macomb County DHS (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 July 12, 2010. Claimant appeared and testified. Claimant was represented by [REDACTED].

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 January 11, 2010, claimant filed an application for MA-P benefits. Claimant requested MA-P retroactive to December of 2009.
2. On February 25, 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. Claimant, age 54, has a high-school education.
5. Claimant last worked in September of 2009 as an optical technician (light work, see *Dictionary of Occupational Titles*, Code 716.382-018). Claimant has also performed relevant work as a machine operator. Claimant's relevant work history consists exclusively of work activities requiring the ability to engage in light work.

6. Claimant has a history of substance abuse and nicotine dependence. He has participated in an ongoing methadone treatment program for opioid dependence.
7. Claimant was hospitalized [REDACTED]. His discharge diagnosis was alcoholic cirrhosis of the liver. His secondary diagnosis was acquired coagulation factor deficiency, chest pain, unspecified alcohol dependence, drug abuse in remission, unspecified viral hepatitis C, tobacco abuse, calculus of the gall bladder without cholecystitis, thrombocytopenia, and atrial fibrillation.
8. Claimant currently suffers from degenerative joint disease of the lumbar spine, bilateral leg pain secondary to peripheral neuropathy, hepatitis C, alcohol abuse, and nicotine dependence.
9. Claimant has severe limitations upon his ability to walk, stand, and carry heavy objects. Claimant's limitations have lasted or are expected to last twelve months or more.
10. 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 limited to unskilled sedentary work activities 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 (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, 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) 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). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical findings, that claimant is not capable of the walking, standing, lifting, pushing, pulling, carrying, or handling as required by his past employment. Claimant has presented the required medical data and evidence necessary to support a finding that he is not, at this 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 (6th 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 substance abuse and has been participating in an ongoing methadone treatment program for opioid dependence. Claimant was hospitalized [REDACTED] as a result of chest pain. He was diagnosed with alcoholic cirrhosis of the liver. On [REDACTED], claimant's treating physician diagnosed claimant with degenerative joint disease of the

lumbosacral spine, peripheral neuropathy, and hepatitis C. The physician opined that claimant was limited to occasionally lifting up to twenty pounds and limited to standing and walking less than two hours in an eight-hour work day and sitting less than six hours in an eight-hour work day. The physician indicated that claimant would need the ability to change positions at will. The physician further opined that claimant was incapable of operating foot or leg controls secondary neuropathy of the bilateral lower extremities. At the hearing, claimant testified that he experiences shortness of breath with physical activities and is bothered with swelling feet as well as cramps in his hands and legs. Claimant indicated that he believes he could walk two hours out of an eight-hour day if he could limit his walking to five to ten minutes at a time.

Given the hearing record, the undersigned finds that, at best, claimant is capable of sedentary work activities. The record will not support a finding that claimant is capable of a good deal of walking or standing such as would be required for light work activities. See 20 CFR 416.967(b). Light work activities require the ability to stand or walk at least six hours in an eight-hour work day. See Social Security Ruling 83-10. Also see Social Security Ruling 83-14 which suggests that the major difference between sedentary and light work, especially for those individuals at an unskilled level, is that most light work jobs will require the ability to stand or walk most of the day. Thus, the undersigned must find that claimant is limited to sedentary work activities.

Considering that claimant, at age 54, is closely approaching advanced age, has a high-school education, has a work history in which claimant's work skills are not currently transferable due to claimant's physical limitations, and has a maximum sustained work capacity which is limited to sedentary work, this Administrative Law Judge finds that claimant's impairments do prevent him from engaging in other work. See 20 CFR, Part 404, Subpart P, Appendix 2, Table 1, Rule 201.14. The record fails to support a finding that claimant has the residual functional capacity for substantial gainful activity. The department has failed to provide vocational evidence which establishes that, given claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which claimant could perform despite his limitations. Accordingly, the undersigned concludes that claimant is disabled for purposes of the MA program.

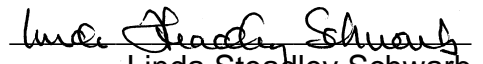
The Medical Social Work Consultant (MSWC), in conjunction with the Medical Review Team (MRT), is to consider the appropriateness of directing claimant to participate in appropriate substance abuse treatment. Unless the MSWC determines that claimant has good cause for failure to participate in mandatory treatment, claimant will lose eligibility for MA-P benefits. BEM Item 260, p. 5.

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 December of 2009.

Accordingly, the department is ordered to initiate a review of the January 11, 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 July of 2011.

The Medical Social Work Consultant, in conjunction with the Medical Review Team, is to consider the appropriateness of ordering claimant to participate in mandatory substance abuse treatment as a condition of the receipt of benefits.


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

Date Signed: July 27, 2010

Date Mailed: July 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:

