

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.: 2010-38583  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED] 0  
Hearing Date: July 19, 2010  
DHS County: Macomb (12)

**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 19, 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 June 26, 2009, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to March of 2009.
2. On February 3, 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 3, 2010, a hearing request was filed to protest the department's determination.
4. Claimant, age 49, has a high-school education with a history of special education services for the learning disabled.
5. Claimant last worked in approximately 2006 as a carpenter/furniture refinisher.

6. Claimant has a history of alcohol abuse, now in sustained full remission; encephalopathy; traumatic brain injury in [REDACTED]; diabetes mellitus; and fracture of the right fibula with bone graft causing a difference in leg lengths.
7. Claimant has a full legal guardian.
8. Claimant resides in an adult foster care facility.
9. Claimant currently suffers from diabetes mellitus; hypertension; chronic obstructive pulmonary disease; leg length discrepancy; and dementia with depression and anxiety secondary to traumatic brain injury, history of alcohol abuse, and possible decades of exposure to chemicals. Claimant has a current GAF score of 45 and a full-scale IQ of 65.
10. Claimant has severe limitations upon his ability to lift heavy objects as well as severe limitations with memory, judgment, ability to respond appropriately to others, and ability to deal with change. Claimant's limitations have lasted twelve months or more.
11. 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 lifting heavy objects; 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 claimant's impairments meet or equal a "listed impairment." See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A, Section 12.05c. On [REDACTED], claimant was evaluated by a consulting psychologist for the department. Following evaluation and testing, the consultant found that claimant has a full-scale IQ of 65. Claimant was said to have a first-grade reading level and first-grade spelling level. The consultant commented as follows:

"These severe degradations in basic learning achievements amount to functional illiteracy and are fairly consistent with his 'across the board' cognitive fund and deficits in subareas of cognitive functioning."

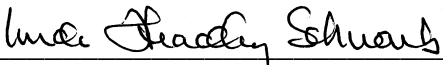
The consultant diagnosed claimant with dementia with depression and anxiety secondary to suspected combination of traumatic brain injury, at least two decades of alcoholic ETOH consumption until approximately two years ago and possible decades of exposure to chemicals used in furniture refinishing. The consultant gave claimant a current GAF score of 45 and opined that claimant was moderately to markedly limited in nearly every area of understanding and memory, sustained concentration and persistence, social interaction, and adaption. On [REDACTED], claimant's primary care physician diagnosed claimant with diabetes mellitus, chronic obstructive pulmonary disease, closed-head injury, and history of alcohol abuse. The consultant indicated that claimant was limited to lifting less than ten pounds. He noted that claimant had mental limitations with regard to comprehension, memory, sustained concentration, following simple directions, and reading/writing. Claimant has had a full guardian appointed for him. He resides in an adult foster care facility. When considering whether claimant meets a listed impairment, it must be noted that the record supports a finding that claimant has a valid IQ score of 60 to 70 and has an additional impairment (other than mental retardation) that meets the "severity" standard. The "severity" step of the sequential evaluation analysis is a threshold inquiry which allows only "claims based on the most trivial impairments to be rejected." Claimant's burden of showing severity is *mild*. A claimant "need only show that (his or her) impairment is not so slight and its effect is not so minimal." *McDaniel v Bowen*, 800 F2d 1026, 1031 (11 CA, 1986). An impairment is not severe if it is a slight abnormality which has such a minimal effect on the individual that it would not be expected to interfere with the claimant's ability to work, irrespective of age, education, or work experience. *Brady v Heckler*, 724 F2d 914, 920 (11 CA, 1984). In this case, claimant has a history of special education services as well as a traumatic brain injury in [REDACTED]. The medical record clearly establishes that, in addition to intellectual deficits, claimant has severe impairments which impose

additional and significant work-related limitations of function. Accordingly, the undersigned finds that claimant is "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 March of 2009.

Accordingly, the department is ordered to initiate a review of the June 26, 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. Assuming that claimant is otherwise eligible for program benefits, the department shall review claimant's continued eligibility for program benefits in October of 2011.

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

Date Signed: October 5, 2010

Date Mailed: October 5, 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.

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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:

