

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.: 2010-40021
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: July 26, 2010
Macomb County DHS (36)

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 26, 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 November 3, 2009, claimant filed an application for MA-P benefits. Claimant requested MA-P retroactive to September of 2009.
2. On February 1, 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 3, 2010, a hearing request was filed to protest the department's determination.
4. Claimant, age 49, has high-school education.
5. Claimant last worked in 2008 as a materials handler/hi-lo driver. Claimant's relevant work history consists exclusively of unskilled work activities.

6. Claimant has a history of coronary artery disease, hypertension, hypothyroidism, and chronic low back pain.
7. Claimant was hospitalized [REDACTED] with complaints of abdominal and chest pain. His discharge diagnosis was uncontrolled diabetes mellitus; diabetic gastroparesis as evidenced by gastric emptying studies; duodenitis as per EGD; gastroesophageal reflux disease; dyslipidemia; morbid obesity; possible obstructive sleep apnea; hypertension; and hypothyroidism.
8. Claimant was hospitalized [REDACTED] secondary to chest pain. His discharge diagnosis was chest pain, status post cardiac catheterization; uncontrolled diabetes mellitus; morbid obesity; adult respiratory failure and chronic kidney disease; history of gastroesophageal reflux disease and duodenitis; dyslipidemia; hypertension; hypothyroidism; hyperkalemia; and possible obstructive sleep apnea.
9. Claimant currently suffers from chronic intractable low back pain secondary to degenerative disc disease with L5 radiculopathy; coronary artery disease; insulin-dependent diabetes mellitus; diabetic gastroparesis; diabetic peripheral neuropathy; hypothyroidism; hypertension; morbid obesity; hyperlipidemia; gastroesophageal reflux disease; panic disorder; and dysthymic disorder.
10. Claimant has severe limitations upon his ability to walk, stand, sit, lift, carry, reach, and handle as well as limitations with ability to respond appropriately to others and deal with change. Claimant's limitations have lasted or are expected to last 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 (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 and mental limitations upon his ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling as well as ability to respond appropriately to supervision, co-workers, and usual work situations and ability to deal 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). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings, that claimant is not capable of the walking, standing, sitting, lifting, carrying, handling, or personal interaction 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.

As indicated, claimant has had recent hospitalizations as a result of his cardiac and diabetic conditions. An MRI of claimant's lumbar spine performed on [REDACTED], documented multi-level degenerative disc disease which was somewhat worse at P12 through L3 as well as L5-S1, scoliosis, various areas of nerve impingement and canal stenosis as well as Grade I anterolisthesis of L5 on S1. On [REDACTED], claimant was seen by a consulting internist for the Disability Determination Service. The consultant provided the following impression:

Osteoarthritis and spinal disorder – patient has significant arthritis involving his neck but extensive lumbar region arthritic changes... He has limitations with bending and lifting and walking more than 50 feet. He apparently has severe numbness with his neuropathy and back pain... Significant neuropathy was noted...

Ambulation - ... He was in pain while walking and apparently claims that 50-100 feet is the maximum distance he is able to travel. He could not squat...

Chest pain – patient has coronary artery disease. He is status post triple stenting... Has shortness of breath secondary to morbid obesity...

Hypertensive cardiovascular disease - ...

Peripheral vascular disease - ...

Diabetes – the patient has definite neuropathy involving his feet causing problems with standing for prolonged periods of time or walking. He has gastroparesis...

Claimant was seen by a consulting psychiatrist for the [REDACTED] on [REDACTED]. The consultant diagnosed dysthymic disorder, chronic as well as panic disorder, chronic. Claimant was given a current GAF score of 55. On [REDACTED], claimant's treating specialist in physical medicine and rehabilitation opined that claimant was limited to occasionally lifting less than ten pounds and limited to standing and walking less than two hours in an eight-hour work day. The physician indicated that claimant was incapable of operating foot or leg controls and incapable of reaching, pushing/pulling, or fine manipulation with the bilateral upper extremities. On [REDACTED], claimant's treating chiropractor opined that claimant was limited to standing and walking less than two hours in an eight-hour work day and sitting about six hours in an eight-hour work day. On [REDACTED], EMG and nerve conduction

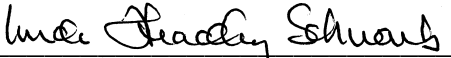
studies confirmed significant left L5 radiculopathy with signs of denervation. On [REDACTED], claimant's treating primary care physician opined that claimant was incapable of lifting any amount of weight and incapable of operating foot or leg controls with the bilateral lower extremities.

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.

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 September of 2009.

Accordingly, the department is ordered to initiate a review of the November 3, 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 August of 2011.


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

Date Signed: July 29, 2010

Date Mailed: July 29, 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:

