

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.: 2010-46175  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date: September 16, 2010  
DHS County: Oakland (03)

**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 September 16, 2010. Claimant appeared and testified. 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 December 3, 2009, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to September of 2009.
2. On January 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 April 12, 2010, a hearing request was filed to protest the department's determination.
4. Claimant, age 37, has tenth-grade education.

5. Claimant last worked in 2006 as a machine operator. Claimant has also performed relevant work as waiter. Claimant's relevant work history consists exclusively of unskilled work activities.
6. Claimant has a history of chronic and persistent mental illness (bipolar disorder, depression, and anxiety), hypertension, chronic neck pain, and substance abuse.
7. Claimant was hospitalized [REDACTED]. His discharge diagnosis was bipolar disorder, recurrent, current mixed episode with psychoses and Cluster A personality traits. His GAF score at discharge was 35.
8. Claimant was hospitalized [REDACTED]. His discharge diagnosis was bipolar disorder, depression, anxiety, uncontrolled hypertension, tachycardia, and abnormal thyroid studies.
9. Claimant was hospitalized [REDACTED]. His discharge diagnosis was rhabdomyolysis with fall and trauma to the leg; acute renal insufficiency; cerebral vascular accident or injury; hyperkalemia; substance abuse disorder, mixed type; chronic lower extremity weakness, paresthesias; chronic back pain; bipolar disorder; labile hypertension; and depression.
10. Claimant was hospitalized [REDACTED], for right lower leg and foot pain. Claimant was found to have a positive footdrop. His discharge diagnosis was peripheral neuropathy, debility, lower leg pain, and drug dependency.
11. Claimant currently suffers from bipolar disorder, recurrent; depression; anxiety; panic disorder; substance abuse disorder; chronic pain syndrome; peripheral neuropathy; right footdrop; and hypertension.
12. Claimant has severe limitations upon his ability to walk and stand, use of judgment, ability to respond appropriately to others, and ability to deal with change. Claimant's limitations have lasted or are expected to last twelve months or more.
13. 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 walking and standing; 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 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, personal interaction, judgment, or ability to deal with change 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 (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 has a history of chronic and persistent mental illness with various diagnoses of bipolar disorder, depression, anxiety, and panic disorder. Claimant also has a history of chronic pain disorder, substance abuse disorder, and hypertension. Claimant has had numerous psychiatric hospitalizations. In [REDACTED], claimant collapsed and was found unresponsive. Upon hospitalization, he was diagnosed with rhabdomyolysis of the right lower extremity, acute renal insufficiency, cerebral vascular accident or injury, hyperkalemia, substance abuse disorder, chronic lower extremity weakness and paresthesias; chronic back pain; bipolar disorder; labile hypertension; and depression. Claimant was discharged with the use of a walker. Claimant sought hospital treatment on [REDACTED] for lower right extremity pain. He was found to have positive footdrop and utilized a walker due to the footdrop. Claimant was seen by a consulting psychiatrist for the department on [REDACTED]. The psychiatrist found claimant to have a severe addiction problem and personality disorder.

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.

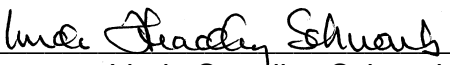
The record does support a finding that claimant suffers from a substance abuse disorder. Section 105 of Public Law 104-121 revised the Social Security Act to eliminate drug addiction and alcoholism (DAA) as a basis of disability eligibility when DAA is "material" to the disability determination. 42 USC, Section 423(d)(2)(C) 1382c(a)(2)(J). Thus, if claimant is to be found disabled, the issue of DAA materiality must be considered. A finding that DAA is material will be made only when the evidence establishes that an individual would no longer be disabled if he stopped using drugs/alcohol. The burden of proof is upon the department to demonstrate "materiality"

or that claimant would no longer be disabled if substance abuse were to terminate. See 20 CFR 416.935. Given the record, this adjudicator cannot project which limitations would remain if claimant's substance abuse were to entirely cease. The record does not support a finding that claimant's physical and mental health limitations would improve such that he would be capable of substantial gainful activity. Inasmuch as the hearing record will not support a finding that claimant's substance abuse is "material" to his disability, the department's determination in this matter must be reversed.

### **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 December 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 November of 2011.

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

Date Signed: November 4, 2010

Date Mailed: November 4, 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.

2010-46175/LSS

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

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