

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-53949
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: December 12, 2011
DHS County: Macomb (50-20)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, and Claimant's request for a hearing. After due notice, a telephone hearing was held on December 12, 2011, from Detroit, Michigan. Claimant appeared and testified. Claimant was represented by [REDACTED]. [REDACTED] appeared and testified on behalf of the Department of Human Services (Department).

ISSUE

Did the Department properly determine that Claimant is not disabled for purposes of the Medical Assistance (MA-P) disability and MA-P retroactive disability benefits program?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material and substantial evidence and on the entire record, makes the following findings of fact:

1. On July 12, 2011, Claimant filed an application for MA-P benefits. The application also requested MA-P retroactive to April 1, 2011.
2. On September 2, 2011, the Department denied Claimant's application for benefits based upon the belief that Claimant did not meet the requisite disability criteria.
3. On September 13, 2011, Claimant filed a hearing request to protest the Department's determination.
4. Claimant, age fifty-three, has a sixth-grade education. He was a special education student.

5. Claimant last worked in 2005. Claimant performed relevant work as an assembly line plate hanger, machine cleaner, furniture mover, watering flowers at a nursery, and chrome plater. Claimant's relevant work history consists exclusively of unskilled heavy work activities.
6. Claimant has a history of a cervical spine (neck) impairment, depression, cataracts, and deafness of the left ear.
7. Claimant has not been hospitalized in the past year, but has visited hospital emergency rooms in [REDACTED] for neck pain radiating down to both lower extremities.
8. Claimant currently suffers from depression, cervical strain, cataracts and deafness in the left ear.
9. Claimant has severe limitations on his ability to sit, walk, stand, bend, carry, and rotate and bend his neck. Claimant's limitations have lasted or are expected to last twelve months or more.
10. On [REDACTED], Claimant's family physician, [REDACTED] disabled him from work until further notice.
11. Claimant's complaints and allegations concerning neck and psychological 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 administers MA pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables (RFT).

Federal regulations require that the Department use the same operative definition for "disabled" as the Federal government uses for Supplemental Security Income (SSI) under Title XVI of the U.S. 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.

Second, 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 minimis* hurdle" in the disability determination. The *de minimis* 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 working on an assembly line, cleaning machines, watering plants and performing chrome plating work. Medical evidence has clearly established that Claimant has a combination of impairments that have more than a minimal effect on Claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63.

In Step 3 of the sequential consideration of a disability claim, the trier of fact must determine if Claimant's impairment (or combination of impairments) is listed in Part 1.00, Musculoskeletal System, and Part 12.00, Mental Disorders, in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that Claimant's medical record does not support a finding that his impairments are listed impairments or that they are equal to any 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 Step 4 of the sequential consideration of a disability claim, the trier of fact must determine if Claimant's impairments prevent him 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 skills 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.

This decision is based on the fact that Claimant has unbearable neck pain which is only nominally decreased by medication. His MRI report shows three disc bulges at C3-4, C4-5 and C5-6. Claimant has undergone three sessions of physical therapy, which is the maximum covered by his current insurance. These sessions were unsuccessful. Claimant was referred to a neurosurgeon, [REDACTED], and will see him again this week.

Claimant has been in treatment with a family physician, [REDACTED] for his neck pain since at least [REDACTED]. [REDACTED] diagnosed cervical strain, bulging disc, bipolar disorder, anxiety, hypertension, Hepatitis C, and numbness and weakness in both legs. Claimant was unable to perform a straight leg raise test due to pain.

Claimant was seen in a hospital emergency department twice [REDACTED] for neck pain. Claimant cannot read, write or perform basic math skills. Claimant lives with his mother, his sister and his son, who is seven years old. Claimant's son weighs 35-40 lbs. and Claimant can just pick him up. Claimant plays with his son "as best I can."

Claimant does not know how to cook, and cannot read a grocery list for shopping. Claimant's sleep is disrupted by pain. He currently takes Vicodin, Valium and Soma. He has no hobbies, and he does listen to music and watch birds.

Claimant has no social activities and is depressed. He has lost interest in everything except his son. He is seeing a psychologist 1-3 times per month at the [REDACTED], and has been going there since [REDACTED]. He wants to see a psychiatrist because "things go through my head." He does have an appointment to see a psychiatrist on [REDACTED] and is trying to get an earlier appointment.

Claimant does not have a driver's license, although he does know how to drive. Claimant does not perform yard work because of pain, but he can clean his room, take

out trash, and load the dishwasher. Basically, he cannot rotate his neck to the left or right, bend the neck up or down, or bend from shoulder to shoulder. His mother has to shave his face because of his limitations of movement in the neck.

██████████, Claimant's family physician, disabled him from all work on ██████████, until further notice. It is found and determined that this is credible, un rebutted evidence that Claimant is disabled from work.

Furthermore, Claimant has psychological difficulty which has been diagnosed by ██████████, as cognitive and mood disorders. ██████████ were assigned to evaluate Claimant at the request of the Department and are not Claimant's treating mental health care providers.

██████████ report indicates Claimant has a Global Assessment Function (GAF) score of 60 and his prognosis is guarded due to cognitive disorder, medical issues and mood swings. ██████████ indicates Claimant cannot manage money, and he would benefit from medication review and support therapy. His report states Claimant advised him he has verbal outbursts due to frustration and mood swings. ██████████ noted that Claimant had difficulty with one-step instructions, directions had to be reported multiple times, Claimant had difficulty concentrating, and Claimant responded to every noise in the clinic environment. ██████████ wrote that Claimant may have difficulty maintaining safety standards and work routines. He advised psychological testing.

All of this information causes this Administrative Law Judge to conclude that Claimant is not capable of performing past relevant work such as working on an assembly line where the tasks may require many steps; watering flowers and cleaning machines, which involve lifting, bending, and multiple neck movements; and moving furniture which involves bending, lifting, carrying, and use of the neck and neck muscles. The conclusion that Claimant cannot work is, most importantly, based on his treating physician's instruction that Claimant is disabled from work until further notice.

Proceeding last to Step 5 of the SSI sequential evaluation process, in this step the trier of fact must determine if Claimant's impairments prevent him 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 your 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 the claimant reaches Step 5 in the sequential review process, the claimant has established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6th Cir,

1984). At Step 5, the burden of proof is on the Department to prove by substantial evidence that the claimant has the residual functional capacity for substantial gainful activity.

In this case, 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 him 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 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 his limitations. Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the State of Michigan 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 July 12, 2011, and retroactively.

Accordingly, the Department is ordered to do the following:

1. Initiate a review of Claimant's application, if it has not already done so, to determine if all nonmedical eligibility criteria are met;
2. Initiate procedures to inform Claimant in writing whether his application is approved or denied.
3. Assuming Claimant is otherwise eligible for program benefits, the Department shall review Claimant's continued eligibility for program benefits no earlier than January, 2013.
4. All steps shall be taken in accordance with Department policy and procedure.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: December 13, 2011

Date Mailed: December 13, 2011

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

JL/pf

cc:

