

entered an inpatient treatment facility for substance abuse counseling. On September 15, 2005, Mr. Tanner is to be discharged from the treatment facility. As of his discharge from the hospital, Mr. Tanner will be both physically and psychology able to work. Mr. Tanner intends to commence his work search immediately and will be seeking employment in the gas and utilities field.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Tanner has been able and available for work since establishing his claim for benefits and whether he is able and available for work at this time.

In order for Mr. Tanner to be eligible to receive benefits, the evidence in the record must establish that he is able to work, available for work, and earnestly and actively seeking work. See Iowa Code section 96.4(3) and 871 IAC 24.22. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood. See 871 IAC 24.22(1). Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. See 871 IAC 24.22(1)(a). A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. See 871 IAC 24.22(1)(a). An individual must be able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides. See 871 IAC 24.22(1)(b).

The evidence in the record establishes that Mr. Tanner was able and available for work from the effective date of his claim through August 21, 2005. The evidence establishes that Mr. Tanner was not able and available for work from August 22 through September 15, the period during which he was hospitalized. The evidence establishes that Mr. Tanner will be able and available for work effective September 16, 2005.

DECISION:

The Agency representative's August 26, 2005, reference 02, decision is modified as follows. The claimant was able and available for work from the effective date of his claim through August 21, 2005. The claimant was not able and available for work from August 22 through September 15, 2005. The claimant is able and available for work effective September 16, 2005.

JT/kjf