

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2008-21416

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 21, 2008

Wayne County DHS

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 August 21, 2008. Claimant appeared and testified. Claimant was represented by [REDACTED]

[REDACTED]. Following the hearing, the record was kept open for the receipt of additional medical evidence. Some additional materials were received.

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) and State Disability Assistance (SDA) programs?

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 14, 2007, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to September of 2007.

(2) On February 28, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.

(3) On May 23, 2008, a hearing request was filed to protest the department's determination.

(4) Claimant, age 59, has a high school education.

(5) Claimant's last relevant work was in approximately April of 2007, handing out flyers. Claimant has also performed relevant work as a custodian. Claimant's relevant work history consists exclusively of unskilled work activities.

(6) Claimant has a history of alcohol abuse, hepatitis C, hypertension, and hernia repair in 2007.

(7) Claimant was hospitalized [REDACTED] through [REDACTED] as a result of an assault. He suffered closed rib fractures and splenic laceration.

(8) Claimant had an emergency room visit on [REDACTED] for seizure disorder, acute alcohol intoxication, and sub-therapeutic Dilantin and Phenobarbital.

(9) Claimant had an emergency room visit on [REDACTED] for alcohol intoxication and seizure disorder.

(10) Claimant had an emergency room visit on [REDACTED] for acute alcohol intoxication.

(11) On [REDACTED] claimant had an emergency room visit for acute alcohol intoxication; seizure, existing diagnosis; and medication refill.

(12) On [REDACTED] claimant had an emergency room visit for a left cheek abrasion and small left corneal abrasion.

(13) At the hearing, the undersigned Administrative Law Judge ordered the department to set up and pay for a consulting psychological and consulting internist evaluation of claimant.

(14) Despite due notice, claimant failed to attend his scheduled consultative exams and did not provide a good reason for his failure to attend these scheduled appointments.

(15) Claimant suffers from seizure disorder, alcohol abuse, and degenerative disc disease of the cervical spine.

(16) 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 has the physical and mental capacity to engage in medium work activities 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 (PAM), the Program Eligibility Manual (PEM) 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 general, claimant has the responsibility to prove that he is disabled.

Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

At the hearing, the undersigned Administrative Law Judge ordered the department to set up and pay for a consulting psychological and consulting internist examination for claimant. Unfortunately, despite due notice, claimant failed to attend his scheduling consultative exams. Claimant failed to provide any good cause reason for his failure to attend the consultative examinations. Federal regulation has the following to say regarding claimant's failure to appear at a consultative examination:

If you are applying for benefits and do not have a good reason for failing or refusing to take part in a consultative examination or test which we arrange for you to get information we need to determine your disability or blindness, we may find that you are not disabled or blind. 20 CFR 416.918(a).

Nonetheless, the undersigned Administrative Law Judge will endeavor to make a determination based upon the limited available information.

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 testified that he is not currently engaged in substantial gainful activity. He reported that he was engaging in odd jobs such as house painting, carpet cleaning, and janitorial services to pay for his prescriptions. Claimant testified that he has not been engaged in substantial gainful activity. If claimant is to be believed, he may not be disqualified for MA 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 significant limitations upon his ability to engage in basic work activities such as lifting extremely heavy objects. Medical evidence suggests 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 to 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 to 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 her 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 findings, that claimant is capable of his past work distributing flyers and/or work as a custodian. Claimant has failed to present the required medical data and evidence necessary to support a finding that he is not, at this point, capable of performing such work. If claimant is incapable of past work, he is capable of other work activities.

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).

The undersigned Administrative Law Judge finds that claimant's residual functional capacity for work activities on a regular and continuing basis does include the ability to meet the physical and mental demands required to perform medium work. Medium work is defined as follows:

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

There is insufficient objective medical evidence, signs, and symptoms to support a determination that claimant is incapable of performing the physical and mental activities necessary for a wide range of medium work. Claimant has a history of alcohol abuse, hepatitis C, hypertension, and hernia repair in 2007. He was hospitalized in [REDACTED] following an assault and treated for closed rib fractures and a splenic laceration. Thereafter, he had numerous emergency room visits for acute alcohol intoxication and/or a seizure disorder. The record clearly supports a finding that claimant suffers from alcohol abuse and a seizure disorder. The only other documented ongoing problem is with degenerative disc disease of the cervical spine

(See Department Exhibit 1, page 17.) At the hearing, claimant complained of a seizure disorder. He reported that he is performing odd jobs such as house painting, carpet cleaning and janitorial services in order to pay for his prescriptions. He testified that he does volunteer work at Operation Get Down, working in a kitchen. Claimant testified that he helps cook, does dishes, serves, and waxing/mops the floor. The available hearing record fails to support the position that claimant is incapable of medium work activities.

Considering that claimant, at age 59, is of advanced age, has a high school education, has an unskilled work history, and has a sustained work capacity for medium work, the undersigned finds that claimant's impairments do not prevent him from doing other work. See 20 CFR, Part 404, Subpart P, Appendix 2, Table 3, Rule 203.14. Accordingly, the undersigned must find that claimant is not disabled for purposes of the MA program.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM Item 261. In this case, there is insufficient medical evidence to support a finding that claimant is incapacitated or unable to work under SSI disability standards for at least 90 days.

Therefore, the undersigned finds that claimant is not presently disabled for purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services properly determined that claimant is not “disabled” for purposes of the Medical Assistance and State Disability Assistance programs.

Accordingly, the department’s determination in this matter is hereby AFFIRMED.

/s/

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

Date Signed: 6/2/09

Date Mailed: 6/5/09

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 mailing date of the rehearing decision.

LSS/cv

cc:

[REDACTED]