

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: 2008-28169

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 6, 2008

Oakland 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 November 6, 2008. 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 November 26, 2007, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to October of 2007.

(2) On January 14, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.

(3) On March 12, 2008, a hearing request was filed to protest the department's determination.

(4) Claimant, age 52, has a high school education.

(5) Claimant last worked in December of 2006 as a security guard. She has also performed relevant work as an assembly line worker, a cashier and an assistant manager at [REDACTED], and as a cashier and stocker at a gas station. Claimant's relevant work history consists exclusively of unskilled work activities.

(6) Claimant has a history of kidney stones with recurrent kidney infections. She was hospitalized in December of 2006 in an attempt to surgically remove her nonfunctioning right kidney which was said to be full of stones with inflammatory changes. The surgeon was unable to extract the kidney intact due to significant scarring, induration and desmoplastic changes of inflammation.

(7) Claimant was rehospitalized in October of 2007 when she underwent a total abdominal hysterectomy and bilateral salpingo-oophorectomy secondary to endometrial adenocarcinoma.

(8) Claimant suffers from a chronic open 1 inch x 1 inch wound on the site of the December of 2006 surgical attempt to remove her nonfunctioning right kidney. Additionally, claimant suffers from hypertension, atrial flutter, type 2 diabetes mellitus, osteoporosis, and degenerative changes of the right hip.

(9) Claimant's complaint and allegations concerning her 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 bases.

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 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 mean 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 claimant has significant physical and mental limitations upon claimant's ability to perform basic work activities such as that she has significant physical limitations upon her ability to perform basic work activities such as walking, standing, lifting, pushing, reaching, carrying, or handling. 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.

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, lifting, or carrying required by her past employment. Claimant has presented the required medical data and evidence necessary to support the finding that she 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.

In this case claimant has a history of kidney stones with recurrent kidney infection. In December of 2006, claimant underwent a surgical attempt to remove her nonfunctioning, stone-filled right kidney. The surgical attempt was unsuccessful as the surgeon was unable to remove the kidney intact due to significant scarring, induration, and desmoplastic changes of inflammation. Shortly after the unsuccessful surgical attempt, claimant developed a chronic open wound, approximately 1 inch x 1 inch at the surgical site. That wound has remained open to date. Claimant was rehospitalized in October of 2007 following diagnosis with endometrial cancer. She underwent a total abdominal hysterectomy and bilateral salpingo-oophorectomy. Claimant was seen by a consulting internist for the department on December 22, 2008. The consultant provided the following assessments: diabetes, mellitus type 2; atrial flutter with the

control ventricular rate of 78; heart murmur; hypertension; low back pain secondary to arthritis; right hip pain secondary to arthritis; history of endometrial cancer; nonfunctioning right kidney; right-sided nephrolithiasis; open wound at the incision site on the right flank; and tobaccoism.

The consultant opined that claimant is limited to occasionally lifting less than 10 pounds and standing and walking less than 2 hours in an 8 hour work-day. The consultant further indicated that claimant is incapable of operating foot or leg controls and incapable of simple grasping, reaching and fine manipulation with the bilateral upper extremities. The consultant did note that claimant has diffuse spasm in the lumbosacral region as well as spasm in the right hip region with reduced range of motion.

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 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 October of 2007.

Accordingly, the department is ORDERED to initiate a review of the November 26, 2007 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 her 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 April of 2010.

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

Date Signed: 5/12/09

Date Mailed: 5/14/09

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 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.

LSS/at

cc:

