

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.: 2008-11890
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
November 17, 2008
Oakland County DHS (02)

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 17, 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) 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 27, 2006, an application was filed on claimant's behalf for MA-P and SDA benefits. The application requested MA-P retroactive to September of 2006.
- 2) On April 6, 2007, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On June 28, 2007, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 52, has an eleventh-grade education. Claimant self reports having received special education services while in grades seven and eight.
- 5) At the time of the hearing, claimant testified that he was working thirty hours a week through [REDACTED], putting small parts in a box. Claimant testified that his job required constant standing.
- 6) Claimant has previously performed relevant work as a truck driver, handyman, and laborer "gutting" houses. Claimant's relevant work history consists exclusively of unskilled work activities.
- 7) Claimant has a history of chronic opiate (heroin) dependency, alcohol abuse, gout, and chronic obstructive pulmonary disease.
- 8) Claimant was hospitalized [REDACTED] for a thyroid mass and chronic obstructive pulmonary disease. An echocardiogram documented mild left ventricular hypertrophy and small pericardial effusion without evidence of tamponade. Claimant has had no further hospitalizations.
- 9) Claimant currently suffers from chronic back pain secondary to disc herniation at L2-L3, L3-L4, L4-L5, and L5-S1 with right L5-S1 radiculopathy as well as

chronic obstructive pulmonary disease, hypothyroidism with goiter, mood disorder due to back problems, opiate (heroin) dependence (self reported to be in remission), and alcohol dependence (self reported to be in remission).

- 10) Claimant has severe limitations upon his ability to lift heavy objects. Claimant's limitations have lasted for twelve months or more.
- 11) 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 simple, unskilled, light 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.

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 at the hearing that he was currently working thirty hours a week, earning \$7.40 an hour. Thus, claimant was earning approximately \$954.00 per month. Inasmuch as the monthly substantial gainful activity amount for 2008 was \$940.00, it would appear that claimant was engaged in substantial gainful activity. Inasmuch as the undersigned Administrative Law Judge was not provided information

as to claimant's work history following the hearing, the sequential evaluation process will continue.

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 presented the required medical data and evidence necessary to support a finding that he has significant physical limitations upon his ability to perform basic work activities such as lifting heavy objects. 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). In this case, the hearing record does not reveal the status of claimant's work history following the hearing on November 17 of 2008. But, the record does suggest that claimant's past relevant work as a truck and delivery driver, handyman, and laborer, did require the ability to lift heavy objects. It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychiatric findings, that claimant is not capable of the heavy lifting required by his past relevant employment. Thus, the sequential evaluation process must continue.

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).

This 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 to perform unskilled light work activities. Light work is defined as follows:

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

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 light work. Claimant was hospitalized in [REDACTED] for a thyroid mass and chronic obstructive pulmonary disease. An echocardiogram documented mild left ventricular hypertrophy and pericardial effusion without evidence of tamponade. The record indicates that claimant has had no further hospitalization. Per an MRI of [REDACTED], claimant has lumbar disc herniation at L2-L3, L3-L4, L4-L5, and L5-S1. EMG testing on [REDACTED] documented right L5-S1 radiculopathy. Claimant was seen by a consulting internist for the

department on [REDACTED]. The consultant performed a pulmonary function test which revealed a reduced FEV-1 which was indicative of chronic obstructive pulmonary disease. The consultant also diagnosed herniated disc between L4 and L5; hypothyroidism with goiter; chronic obstructive pulmonary disease; and history of gouty arthritis. The consultant noted that claimant was on medication for his hypothyroidism and that the size of the goiter had diminished. Claimant was seen by a consulting psychologist for the department on [REDACTED]. The consultant diagnosed mood disorder due to back problems. Claimant was seen at [REDACTED] on [REDACTED]. (Claimant Exhibit B, Page 3.) He was diagnosed with opiate (heroin) dependence and alcohol dependence. At the hearing, claimant reported that he was in complete remission with regard to drug and alcohol use. As indicated, at the hearing, claimant testified that he was currently employed through Michigan Rehabilitative Services working seven hours a day, thirty hours a week, and earning \$7.40 an hour. Claimant reported that the job required constant standing. Claimant testified that his pain medication helped with his pain and that he was capable of walking two blocks in four to five minutes. Claimant reported that he walked two blocks every day. Claimant testified that he did his own cooking, cleaning, and grocery shopping. After a review of claimant's hospital records, reports from claimant's treating mental health provider and from consultants, claimant has failed to establish limitations which would compromise his ability to perform a wide variety of light work activities on a regular and continuing basis. The record fails to support the position that claimant is incapable of light work activities.

Considering that claimant, at age 52, is closely approaching advanced age, has an eleventh-grade education, has an unskilled work history, and has a maximum sustained work capacity which is limited to light work, this Administrative Law Judge finds that claimant's

impairments do not prevent him from doing other work. See 20 CFR, Part 404, Subpart P, Appendix 2, Table 2, Rule 202.10. Accordingly, the undersigned must find that claimant is not presently 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).

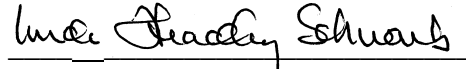
A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (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.


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

Date Signed: February 3, 2010

Date Mailed: February 5, 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.

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

cc:

