

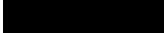
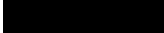
STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Claimant

Reg. No: 2008-24494
Issue No: 2009; 4031
Case No: 
Load No: 
Hearing Date:
October 27, 2008
Jackson County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 October 27, 2008. Claimant appeared and testified.

ISSUE

Whether the Department of Human Services (Department) properly determined that the Claimant is not "disabled" for purposes of the Medical Assistance (MA) program and State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as a material fact:

1. On March 20, 2008, the Claimant applied for MA-P and SDA.
2. On May 14, 2008, the MRT denied the Claimant's application.

3. The Claimant filed a request for hearing regarding the Department's denial of benefits.
4. The Claimant is 46 years old.
5. The Claimant has an 11th grade education.
6. The Claimant's work history in unskilled work as a gutter installer.
7. The Claimant suffers with crushed left hand and left hand pain.
8. Claimant was involved in a motor vehicle accident resulting in a laceration and crush injury to his left hand and wrist in 1996 for which he underwent reconstructive surgery in 1996.
9. Claimant is capable of meeting the physical and mental demands associated with one armed light work 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 (formerly known as the Family Independence Agency) 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).

In order to receive MA benefits based upon disability or blindness, the claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 R 416.901). The Department, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is

known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses.

The law defines disability as the inability to do substantial gainful activity (SGA) 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).

Because disability must be determined on the basis of medical evidence, Federal regulations have delineated a set order entailing a step sequential process for evaluating physical or mental impairments. When claimant is found either disabled or not disabled at any point in the process, the claimant is not considered further.

Addressing the following factors:

The first factor to be consider is whether the Claimant can perform Substantial Gainful Activity (SGA) defined in 20 CFR 416.920(b). In this case, the Claimant is not working. Therefore, the Claimant is not disqualified a this step in the evaluation.

The second step to be determined in considering whether the Claimant is considered disabled is whether the severity of the impairment. In order to qualify the impairment must be considered severe which is defined as an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. 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 agency 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 law that allows the court to disregard trifling matters.

In this case, the Claimant’s medical evidence of record supports a finding that Claimant has significant physical and mental limitations upon Claimant’s ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling in a routine work setting. Medical evidence has clearly established that the Claimant has an impairment (or combination of impairments) that has more than a minimal effect on the Claimant’s work activities. See Social Security Rulings: 85-28, 88-13, and 82-63.

In the third step of the analysis, 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 does not support a finding that the 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, the Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

The fourth step of the analysis to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the Claimant from doing past relevant work. In the present case, the Claimant's past employment experience was installing gutters. It is the finding of this Administrative Law Judge finds based on the medical evidence and objective, physical, and psychological findings, that the Claimant is not capable of the physical or mental activities required to perform his past employment. 20 CFR 416.920(e). The 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.

In the final step of the analysis, the trier of fact must determine: if the Claimant's impairment(s) prevent the 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 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 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 continuing basis does include the ability to meet the physical and mental demands required to perform one-armed light work activities. Light work is defined as follows:

Light work. 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 one-armed, light work activities. Extensive testing has confirmed that, as a result of a motor vehicle accident, claimant suffered the loss of his left hand. There is nothing in the medical record to support a finding that claimant has any other physical limitations. The consultative exam performed on the Claimant on January 16, 2008 indicated no other limitations other than the loss of use of his left forearm, wrist and left hand. The Claimant according to this evaluation retained movement of his left shoulder and elbow. The Claimant retains the use of his right arm and wrist according to the medical report. The medical report failed to indicate any abnormal findings.

After careful review of the Claimant's medical record and Claimant's personal testimony, Claimant has failed to establish limitations which would compromise his ability to perform one-handed light work activities on a regular and continuing basis. See Social Security Ruling 97-11C/ The loss, or loss of use, of a hand or arm is not disabling per se. Federal case law has held that an individual who has lost or has lost use of an arm or hand can still engage in substantial gainful activity. See *Knott v Califano*, 559 F2d 279 (5th Cir, 1977). Claimant's undisputedly has the full use of his right hand and arm. Substantial evidence in the whole record supports the position that, even though limited to the use of his right arm, Claimant can perform a substantial number of jobs in the national economy.

Considering that Claimant, at age 46, has a 11th grade education, and unskilled work history, and has a maximum sustained work capacity which is limited to one-armed light work

activities, this Administrative Law Judge finds that the Claimant's impairments do not prevent him from doing other work. See 20 CFR, Part 404, Subpart P, App. 2, Table 2, Rule 202.17. Accordingly, this Administrative Law Judge finds that Claimant is not presently disabled for purposes of the Medical Assistance program.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 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 ninety days. Receipt of SSI or RSDI benefits based on disability or blindness or the receipt of MA benefits based on 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 261. In this case, there is insufficient medical evidence to support a finding that, despite the loss of use of his left hand and wrist, Claimant is incapacitated or unable to work under SSI disability standards for at least 90 days. Therefore, this Administrative Law Judge 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 Claimant is not "disabled" for purposes of Medical Assistance and State Disability Assistance programs.

Accordingly, the Department decision is hereby UPHELD.

/s/

Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 5/27/09_____

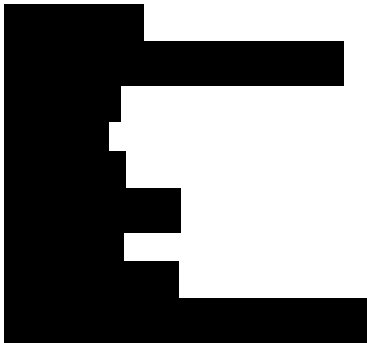
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NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration 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.

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