

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: 2008-30445

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 5, 2009

Monroe 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 March 5, 2009. Claimant appeared and testified. Claimant was represented by [REDACTED]

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 May 22, 2008, claimant filed an application for MA-P benefits. Claimant did not request retroactive medical coverage.
- (2) On July 15, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.

(3) On September 2, 2008, claimant filed a hearing request to protest the department's determination.

(4) Claimant, age 47, has a ninth grade education.

(5) Claimant last worked in 2007 performing various construction jobs such as drywall, building decks, carpentry, and remodeling homes. Claimant has also performed relevant work in the industrial construction setting.

(6) Claimant is not currently capable of performing his past work due to physical limitations.

(7) Claimant currently suffers from mild degenerative disc disease of the lumbar and cervical spine, mild early degenerative disease of the left hip, a 4 cm herniation inguinal canal into the scrotum, and hypertension.

(8) Claimant has severe limitations upon his ability to walk or stand for prolonged periods of time and lift heavy objects. Claimant's limitations have lasted or are expected to last 12 months or more.

(9) 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 or mental capacity to engage in sedentary 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 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 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 walking and standing for long periods of time and 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). 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 prolonged walking and standing or heavy lifting required by his past employment in construction. 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 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 required to perform sedentary work. Sedentary work is defined as follows:

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

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 full range of sedentary work. On May 15, 2008, an x-ray of the lumbar spine documented mild degenerative disease in the lower spine. An x-ray of the left hip on the same date demonstrated mild early degenerative disease within the superior femoral acetabular joint. On June 16, 2008, x-rays of the cervical spine documented mild multi-level degenerative disease with anterior and posterior osteophytosis noted predominantly at C3-4 and C6-7 levels. On June 16, 2008,

claimant's treating physician [REDACTED] diagnosed claimant with degenerative joint disease of the left hip and low back, inguinal hernia, hypertension, neck pain, and degenerative joint disease of the neck. The physician noted that claimant had a 4 cm herniation inguinal canal into the scrotum. The physician noted reduced range of motion of the cervical spine and lumbar spine. [REDACTED] limited claimant to occasionally lifting less than 10 pounds, a complete inability to stand, walk, or sit during an eight-hour workday, and inability to engage in repetitive activities with the upper and lower extremities. [REDACTED] noted that claimant had no mental limitations. On December 10, 2008, [REDACTED] diagnosed claimant with inguinal hernia, degenerative disease of the cervical spine and left hip. The physician again indicated that claimant was limited to occasionally lifting less than 10 pounds as well as incapable of standing, walking, or sitting in an eight-hour workday and incapable of repetitive activities with the upper and lower extremities. [REDACTED] opinion as to claimant's physical capacity is not supported by acceptable medical evidence consisting of clinical signs, symptoms, laboratory or test findings, or evaluative techniques and is not consistent with other substantial evidence in the record. Claimant's physician did not present sufficient medical evidence to support his opinion. The evidence presented fails to support the position that claimant is incapable of a full range of sedentary work activities. See 20 CFR 416.927(c)(2) and .927(d)(3) and (4). All available x-rays of claimant's left hip, cervical spine, and lumbar spine, indicated mild degenerative changes. At hearing, claimant testified that he is capable of walking for 30 minutes, standing for 5 to 10 minutes, sitting for 45 to 60 minutes, and lifting up to 10 pounds. After review of claimant's medical records, reports from his treating physician, and x-ray narratives, claimant has failed to establish limitations which would compromise his ability to perform a wide range of sedentary work

activities on a regular and continuing basis. See Social Security Ruling 83-10 and 96-9(p). The record fails to support the position that claimant is incapable of sedentary work activities.

Considering that claimant, at age 47, is a younger individual, has a ninth grade education, has a work history in which his carpentry skills are not transferable due to his current physical limitations, and has a maximum sustained work capacity for sedentary work, the undersigned finds that claimant's impairments do not prevent him from doing other work. As a guide, see 20 CFR, Part 404, Subpart P, Appendix 2, Table 1, Rule 201.18. Accordingly, the undersigned must find that claimant is not presently 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 the Department of Human Services properly determined that claimant is not "disabled" for purposes of the Medical Assistance program.

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: 6/23/09

Date Mailed: 6/24/09

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.

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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/pj

cc:

