

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.: 2009-12351
Issue No.: 2009/4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 30, 2009
Oakland County DHS (2)

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 30, 2009. The claimant appeared and testified. The claimant was represented by [REDACTED]. Following the hearing, the record was kept open for 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 August 20, 2008, an application was filed on claimant's behalf for MA-P and SDA benefits. The application requested MA-P retroactive to June 2008.

- (2) On December 1, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- (3) On December 17, 2008, a hearing request was filed to protest the department's determination.
- (4) Claimant, age 49, has an 11th grade education.
- (5) Claimant last worked in October 2007 as a machinist. Claimant has also performed tool & die work and construction work.
- (6) Claimant was hospitalized [REDACTED] through [REDACTED]. He underwent aortic valve replacement. His discharge diagnosis was aortic stenosis, hyperlipidemia, new onset diabetes mellitus, and chronic obstructive pulmonary disease.
- (7) Claimant was hospitalized [REDACTED] through [REDACTED]. His discharge diagnosis was fever, history of aortic valve replacement, anemia, and renal insufficiency.
- (8) Claimant was rehospitalized [REDACTED] through [REDACTED]. Claimant's discharge diagnosis was status post aortic valve replacement on IV antibiotics and chronic obstructive pulmonary disease.
- (9) Claimant was hospitalized [REDACTED] through [REDACTED]. His discharge diagnosis was aortic valve replaced, anemia, history of fevers, and coagulopathy.
- (10) Claimant was treated in an emergency room on [REDACTED] as a result of PICC line irritation. His PICC line was removed in the emergency room.
- (11) Claimant was hospitalized [REDACTED] through [REDACTED] as a result of chest pain. He was diagnosed with upper respiratory infection.
- (12) Claimant currently suffers from hyperlipidemia, post aortic valve replacement, chronic obstructive pulmonary disease, and right ankle pain secondary to a history of injuries.

- (13) Claimant has severe limitations upon his ability to walk and stand for prolonged periods of time and lift extremely heavy objects. Claimant's limitations have lasted or are expected to last 12 months or more.
- (14) At the hearing, claimant reported that he was actively involved with [REDACTED] [REDACTED] as well as [REDACTED]. Claimant testified that he was actively seeking employment.
- (15) 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 unskilled 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, the 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 currently working. Accordingly, 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 limitations upon claimant's ability to perform basic work activities such as walking and standing for prolonged periods of time and lifting extremely 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 the heavy lift required by his past employment. 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 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 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 wide range of sedentary work. Claimant was hospitalized in [REDACTED] and underwent an aortic valve replacement. Subsequently he developed infections and fever and was treated with IV antibiotics via a PICC line for presumed myocarditis. On [REDACTED], claimant's treating cardiologist indicated that claimant was a Class II on the New York Heart Classification. [Patients with cardiac disease resulting in slight limitation of physical activity. They are comfortable at rest. Ordinary physical activity results in fatigue, palpitation, dyspnea or anginal pain.] On [REDACTED], claimant's treating primary care physician diagnosed claimant with an aortic replaced, fever, and hyperlipidemia. The physician indicated that claimant had a temporary disability and was expected to return to work within 6 months. The primary care physician indicated that claimant was capable of occasionally lifting up to 25 lbs and capable of standing and walking at least 2 hours in an 8 hour work day. The physician found

that claimant had no limitations with regard to repetitive activities of the upper and lower extremities and no mental limitations. On [REDACTED], the treating physician again opined that claimant was capable of occasionally lifting up to 25 lbs as well as capable of standing and walking at least 2 hours in an 8 hour work day. The physician found that claimant had no limitations with regard to repetitive activities of the upper and lower extremities and no mental limitations. An x-ray of claimant's right ankle performed on [REDACTED], is consistent with an old injury beneath and medial to the medial malleolus and beneath the lateral malleolus. Soft tissue calcification was seen beneath the os calcis as well as retrocalcaneal spur. At the hearing, claimant testified that he was capable of walking for 30 minutes, standing for 10 to 15 minutes, and had no limitations on sitting. He reported that he was capable of lifting up to 25 to 30 lbs and carrying it for a short distance. Claimant testified that on an average day he takes a bus to a friend's house and watches TV and "hangs out". Claimant reported that he goes to garage sales with his friend as well as the library. Claimant testified that he is actively looking for work and engaged with [REDACTED] and [REDACTED]. After a review of claimant's hospital records, reports from claimant's treating physicians, and test results, 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 Rulings 83-10 & 96-9p. The record fails to support the position that claimant is incapable of sedentary work activities. Considering that claimant, at age 49, is a younger individual, has an 11th grade education, has an unskilled work history, and has a sustained work capacity for sedentary work, the undersigned finds that claimant's impairments do not prevent 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 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 Assistant and State Disability Assistant 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: 08/11/09

Date Mailed: 08/12/09

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 the Circuit 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/jlg

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