


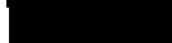
STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Claimant

Reg. No.: 2009-12984
Issue No.: 2009, 4031
Case No.: 
Load No.: 
Hearing Date:
May 14, 2009
Wayne County DHS (35)

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 May 14, 2009. Claimant appeared and testified. Following the hearing, the record was extended for further 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 October 7, 2008, claimant applied for MA-P and SDA benefits. Claimant did not request retroactive medical coverage.

- 2) On December 22, 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 30, 2008, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 57, has a tenth-grade education.
- 5) Claimant last worked in March of 2008 as a ramp agent for [REDACTED].
Claimant has also performed relevant work as a shipping manager and machine operator. Claimant's relevant work history consists exclusively of unskilled work activities.
- 6) Claimant has a history of low back pain and depression.
- 7) In early [REDACTED], claimant began experiencing intense mid-back pain with progressive weakness and numbness of the lower extremities. An [REDACTED], MRI of the thoracic spine documented severe constriction of the spinal cord at the mid-thoracic level due to compression. Claimant reportedly underwent spinal surgery with the [REDACTED] on [REDACTED].
- 8) Claimant currently has back pain with difficulty bending, twisting, and lifting. Claimant uses a cane for ambulation because of a tendency for his legs to "give out." Claimant is also experiencing an adjustment reaction with disturbance of mood.
- 9) Claimant has severe limitations upon his ability to walk, stand, lift, push, pull, reach, carry, and handle. These limitations have lasted or are expected to last twelve months or more.

- 10) 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, 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 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, standing, lifting, pushing, pulling, 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 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 walking, standing, lifting, carrying, or handling 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 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.

The undersigned 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 simple, unskilled, sedentary work. Sedentary work is defined as follows:

.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).

In this case, claimant began experiencing severe mid-back pain in early [REDACTED]. An [REDACTED] [REDACTED], MRI of the thoracic spine demonstrated severe constriction of the cord at the mid-thoracic

level due to compression. Claimant reportedly underwent surgery at the [REDACTED] [REDACTED] on [REDACTED]. Post surgery, claimant has continued to experience back pain and difficulty walking and standing. Claimant uses a cane for ambulation outside of his home due to a tendency for his legs to “buckle.” Claimant was seen by a consulting neurologist for the department on [REDACTED]. The consulting neurologist noted that claimant continued to experience back pain which prevented him from bending, twisting, and carrying heavy weights. Claimant was seen by a consulting psychologist for the department on [REDACTED] [REDACTED]. The psychologist provided the following medical source statement:

“The patient is a 56 year old male, who alleges symptoms of mild depression secondary to his chronic pain and immobility issues. He is not evidencing any symptoms of major depression, anxiety or other psychiatric illness that would interfere with his ability to appropriately interact in the social or work environment. Cognitive functioning appears to be of at least average ability. Short and remote memory is intact that he should be able to do simple, unskilled labor.”

The consulting psychologist provided claimant with the diagnosis of adjustment reaction with depressed mood. Given the hearing record, the undersigned finds that claimant is capable of sedentary work activities. Considering that claimant, at age 57, is of advanced age, has a tenth-grade education, has an unskilled work history, and has a maximum sustained work capacity which is limited to sedentary work, this Administrative Law Judge finds that claimant’s impairment does prevent him from doing other work. See 20 CFR, Part 404, Subpart P, Appendix 2, Table 1, Rule 201.01. The record fails to support the finding that claimant has the residual functional capacity for substantial gainful activity. The department has failed to provide vocational evidence which establishes that, given claimant’s age, education, and work experience, there are significant numbers of jobs in the national economy which claimant could

perform despite his limitations. Accordingly, the undersigned concludes that claimant is 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).

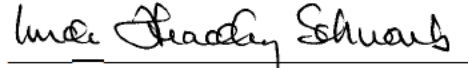
A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (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. Inasmuch as claimant has been found to be “disabled” for purposes of MA, he must also be found “disabled” for purposes of SDA benefits.

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 and State Disability Assistance programs as of October of 2008.

Accordingly, the department is ordered to initiate a review of the October 7, 2008, application, if it has not already done so, to determine if all other non medical eligibility criteria are met. The department shall inform claimant 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 July of 2010.


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:

