

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2009-13881
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: March 30, 2009
DHS County: Huron

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 March 30, 2009. 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) 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 August 29, 2008, an application was filed on claimant's behalf for MA-P benefits. The application did not request retroactive benefits.
2. On October 28, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
3. On January 20, 2009, a hearing request was filed to protest the department's determination.
4. Claimant, age 42, has a high-school education.

5. At the time of the hearing, claimant was working as a cook at [REDACTED]. Claimant had been so employed since [REDACTED] with two weeks off following an [REDACTED] myocardial infarction. Claimant has also worked delivering newspapers, performing light factory work, and as a janitor. Claimant's relevant work history consists exclusively of unskilled work activities.
6. Claimant has a history of diabetes mellitus, hypertension, coronary artery disease status post coronary artery bypass graft x 4 in [REDACTED], seizure disorder, depressive disorder, and right upper extremity birth defect.
7. Claimant was hospitalized [REDACTED] following a myocardial infarction. He underwent heart catheterization with stent placement. Claimant has had no further hospitalizations.
8. Claimant currently suffers from coronary artery disease with history of myocardial infarction, coronary artery bypass graft x 4, and stent placement; hypertension; hyperlipidemia; history of complex partial seizure disorder; limited mobility of the right upper extremity secondary to birth defect; mood disorder NOS; and major depressive disorder, moderate.
9. Claimant has severe limitations upon his ability to lift extremely heavy objects, push, pull, reach, carry, and handle. Claimant's limitations have lasted 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 past work activities as well as other 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 (BAM), the Program Eligibility Manual (BEM) 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, at the time of the hearing, claimant was working at Wendy's as a cook. Claimant reported that he had been so employed since March of 2007 other than a two-week break following his myocardial infarction in August of 2008. Given claimant's limited earnings, the record will not support a finding that claimant is currently engaged in substantial gainful activity. See 20 CFR 416.974. 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 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, 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 indeed capable of this past work activities. Claimant has performed relevant work as a fast food cook, newspaper delivery person, janitor, and light factory worker. Claimant returned to work as a fast food cook two weeks following his [REDACTED] heart attack. The record fails to support the position that claimant is no longer capable of performing these functions.

In this case, claimant was hospitalized [REDACTED] following a myocardial infarction. He underwent heart catheterization with stent placement. On

██████████, claimant had a follow-up cardiac assessment in which claimant's treating cardiologist found that claimant had been "successfully revascularized." On ██████████, the treating cardiologist again opined that claimant had been successfully revascularized and indicated that claimant had no physical limitations from a cardiac standpoint. (See Claimant Exhibit A.)

At the hearing, claimant testified that he had not had a seizure during the previous year. Claimant's last appointment with a neurologist occurred on ██████████, for a re-check on seizures. Claimant reported at that appointment that he had not had any seizures. Claimant was said to be doing well on his seizure medication. (See Claimant Exhibit B.) On ██████████, claimant's treating neurologist completed a DHS-49 for claimant. Claimant was diagnosed with complex partial seizures. The neurologist hand wrote on the DHS-49 that she was unable to comment upon physical limitations as she had not seen claimant since ██████████. The neurologist's handwritten comments also indicated that, since claimant had not been seen since ██████████, she "cannot make any comments unsure of current frequency of spells." Interestingly, despite the neurologist's written statement that she could not comment on physical limitations, the form was checked to indicate that claimant had limitations upon standing or walking and limitations with regard to reaching and pushing/pulling with the right upper extremity. Those marks appear to have been made with a different writing instrument and, in light of the neurologist's handwritten comments that she could not comment upon physical limitations or frequency of spells, are suspicious for having been added to the form by someone other than the treating neurologist.

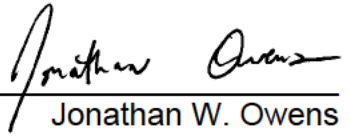
On ██████████, claimant's treating psychiatrist diagnosed claimant with mood disorder NOS, major depressive disorder moderate, and mood disorder due to general medical condition. On ██████████, claimant's treating therapist opined that claimant was moderately limited with regard to his ability to remember locations and work-like procedures as well as ability to carry out detailed instructions. In all other categories of understanding and memory, sustained concentration and persistence, social interaction, and adaption, the therapist indicated that claimant was not significantly limited.

After careful review of the entire hearing record, the undersigned finds that the record does not establish limitations which would compromise claimant's ability to perform his past work activities on a regular and continuing basis. Claimant's treating cardiologist has indicated that claimant has no limitations from a cardiac standpoint. The record suggests that claimant has had no recent seizures. Claimant has no major limitations from a psychiatric standpoint. Claimant's birth defect on his right upper extremity has obviously not prevented claimant from engaging in his past relevant work. The undersigned Administrative Law Judge finds that claimant continues to be capable of the physical and mental demands associated with his past relevant work as well as other forms of light and sedentary work on a regular and continuing basis. Accordingly, the department's determination in this matter is hereby affirmed.

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.



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

Date Signed: December 2, 2010

Date Mailed: December 2, 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.

JWO/pf

cc:

