

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.: 2009-16511
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
May 18, 2009
Wayne 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 May 18, 2009. The 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 December 11, 2008, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to September of 2008.

- 2) On December 26, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On February 9, 2009, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 50, has a ninth grade education. Claimant reportedly received special education services from the third through ninth grades.
- 5) Claimant last worked in 2008 as a sales associate at [REDACTED]. Claimant has also performed relevant work as a machine operator. Claimant's relevant work history consists exclusively of unskilled work activities.
- 6) Claimant has a history of hepatitis C, asthma, anxiety, chronic back pain, tobacco abuse, and heroine abuse. (See Exhibit #1, Page 57.)
- 7) Claimant was hospitalized [REDACTED], as a result of a buttocks abscess-cellulitis secondary to MRSA.
- 8) Claimant received hospital treatment [REDACTED], as the result of an abscess on the buttocks.
- 9) Claimant again sought hospital treatment on [REDACTED], as a result of cellulitis on the lower back.
- 10) Claimant sought hospital treatment on [REDACTED], as a result of an insect bite-abscess under her right ear.
- 11) Claimant currently suffers from a history of hepatitis C, chronic back pain reportedly secondary to a sacrum cyst, reported history of right carpal tunnel syndrome, and sciatica.

- 12) Claimant has severe limitations upon her ability to lift extremely heavy amounts of weight. Claimant's limitations have lasted or are expected to last twelve months or more.
- 13) Claimant's complaints and allegations concerning her 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 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 (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 she 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 claimant has significant physical limitations upon her ability to perform basic work activities such as 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 capable of her past work as a sales associate. Even if claimant were found to be incapable of such past work activities, she would still be found capable of other 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 make the physical and mental demands required to perform simple, unskilled, light work activities. Light work is defined as follows:

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).

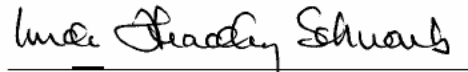
There is insufficient objective medical evidence, signs, and symptoms to support a determination that claimant is incapable of performing the physical and mental activities necessary for a wide range of light work. In this case, claimant has a history of tobacco abuse, hepatitis C, asthma, anxiety, chronic back pain, and heroine abuse. (See Department Exhibit #1, Page 57.) Claimant was hospitalized [REDACTED] as a result of a buttocks abscess-cellulitis secondary to MRSA. She sought hospital treatment again on [REDACTED], as a result of an abscess on the buttocks. She returned to the hospital on [REDACTED] as a result of cellulites on her lower back. Claimant again sought hospital treatment on [REDACTED], as a result of an insect bite-abscess under her right ear. Progress notes from claimant's treating physician indicate that claimant has had complaints with regard to back pain/sciatica and had been provided with medication for same. On [REDACTED], claimant's treating physician diagnosed claimant with sciatica, hepatitis C, sacrum cyst, and carpal tunnel syndrome, right hand. The physician noted that claimant's physical examination was completely normal with the exception of tenderness in the lumbosacral spine area. The physician opined that claimant was incapable of lifting any amount of weight and limited to standing and walking less than two hours in an eight-hour work day and sitting less than six hours in an eight-hour work day. The

physician noted that claimant was incapable of repetitive activities with the bilateral upper extremities. The primary care physician's opinion as to claimant's physical limitations 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 hearing record. Claimant's physician did not present sufficient medical evidence to support his opinion. Claimant's physician had indicated that claimant had a completely normal physical examination other than tenderness in the lumbosacral spine area. The only other medical documentation were the four hospital visits for abscess/cellulitis problems. The evidence presented fails to support the position that claimant is incapable of a wide range of light work activities. At the hearing, claimant reported that she purchases her own food, does her own laundry, and cleans her own room. When asked whether there was anything that she could not do or needed help with, claimant responded "no." Claimant's treating physician indicated that claimant has no mental limitations. Claimant reported that she does drive. The undersigned Administrative Law Judge finds that the hearing record fails to support the position that claimant is incapable of light work activities.

Considering that claimant, at age 50, is closely approaching advanced age, has a ninth grade education, has an unskilled work history, and has a maximum sustained work capacity which is limited to light work, this Administrative Law Judge finds that claimant's impairments do not prevent her from engaging in other work. As a guide, see 20 CFR, Part 404, Subpart P, Appendix 2, Table 2, Rule 202.10. Accordingly, the undersigned finds 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 decision in this matter is hereby affirmed.


Linda Steadley Schwarb
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: January 12, 2010

Date Mailed: January 14, 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:

