

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: 2009-20475

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 15, 2009

Macomb 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 June 15, 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 October 7, 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 18, 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 24, 2009, a hearing request was filed to protest the department's determination.

(4) Claimant, age 49, has a high school education.

(5) Claimant last worked in 2007 as a van driver.

(6) Claimant's relevant work history consists exclusively of work as a truck driver.

(7) Claimant has a history of chronic alcohol abuse (reported to be in current remission), chronic back pain secondary to degenerative changes, and right ear surgery in September of 2007 with no reported residual problems.

(8) Claimant was hospitalized September 24th through September 26th of 2008 following his first and only seizure. His discharge diagnosis was first time generalized seizure. Claimant reported that he has had no further seizure activity.

(9) Claimant suffers from occasional migraine headaches and chronic low back pain secondary to degenerative changes.

(10) Claimant has severe limitations upon his ability to walk or stand for prolonged periods of time and in lifting extremely heavy objectives. Claimant's limitations have lasted or are expected to last 12 months or more.

(11) Claimant is capable of meeting the physical and mental demands associated with his past employment as a truck driver on a regular and continuing bases.

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. 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 do 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 him from doing his past relevant work. 20 CFR 416.920 (e). In this case, claimant suffered a one time seizure on September 24, 2008. He was hospitalized from September 24th through September 26th of 2008. An EEG was normal.

His discharge diagnosis was first generalized seizure. Claimant testified at the hearing that he has experienced no further seizure activity. Claimant indicated that his treating physician has not prescribed seizure medication for claimant. On October 2, 2008, claimant's treating physician diagnosed claimant with chronic obstructive pulmonary disease, osteoarthritis, anxiety, and history of ETOH. The physician opined that claimant was capable of frequently lifting up to 10 pounds and occasionally lifting up to 25 pounds. The treating physician indicated that claimant was capable of standing or walking about 6 hours in an 8 hour work-day and sitting about 6 hours in an 8 hour work-day. The physician indicated that claimant had no limitations with regard to repetitive activities of the upper or lower extremities. At the hearing claimant testified that he is actively seeking employment as a truck driver. Claimant testified that he believes he is capable of working 40 hours a week as a truck driver. Claimant indicated that he is actively working with Michigan Rehabilitation Services in order to assist him in his pursuit of a job as a truck driver. It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical findings, as well as claimant's own testimony as to his ability to function in his home and the community, that claimant is indeed capable of his past work. Accordingly, claimant can not be found to be 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.

/s/

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

Date Signed: 10/20/09

Date Mailed: 10/20/09

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 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/at

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