

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.: 2009-25389  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
July 30, 2009  
Macomb County DHS (36)

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 July 30, 2009. Claimant appeared and testified. Following the hearing, the record was kept open until September 21, 2009 for the receipt of additional medical evidence. The undersigned Administrative Law Judge received a consulting DHS psychological evaluation which was reviewed and considered.

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 March 23, 2009, claimant filed an application seeking MA-P benefits. The application requested MA-P retroactive to December of 2008.
- 2) On April 28, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On May 5, 2009, claimant filed a hearing request to protest the department's determination.
- 4) Claimant, age 28, has a high-school education. Claimant reportedly received special education services while in school.
- 5) Claimant last worked in October of 2008 as a machine operator. Claimant has also performed relevant work as a janitor and materials handler. Claimant's relevant work history consists exclusively of unskilled work activities.
- 6) Claimant has a history of attention deficit disorder and complaints of low back pain. He also has a remote history of a fractured right elbow.
- 7) At the time of the hearing, claimant was a recipient of the Adult Medical Program and had access to medical treatment and prescriptions.
- 8) Claimant currently suffers from attention deficit hyperactivity disorder.
- 9) Claimant has a severe impairment which affects his ability to remember instructions. Claimant's limitation has lasted for twelve months or more.
- 10) Claimant is capable of meeting the physical and mental demands associated with his past relevant work as well as other forms of light work activity 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, 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 was not working at the time of the hearing. 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 (6<sup>th</sup> 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 limitations upon his ability to perform basic work activities such as remembering simple instructions. 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 past relevant work. 20 CFR 416.920(e). In this case, claimant reports a history of attention deficit disorder and receipt

of special education services for same while in school. On [REDACTED], claimant's treating internist diagnosed claimant with attention deficit hyperactivity disorder and back pain. The physician opined that claimant was incapable of lifting any amount of weight but was capable of sitting about six hours in an eight-hour work day. The physician indicated that claimant was incapable of operating foot or leg controls on a repetitive basis and noted limitations with comprehension, memory, sustained concentration, reading/writing, and social interaction. Claimant was seen by a consulting psychologist for the department on [REDACTED]. The consultant diagnosed claimant with attention deficit hyperactivity disorder by history and cannabis abuse in early partial remission. The consultant provided the following medical source statement:

“The patient is a 28 year old male who alleges disability secondary to a history of ADHD, back pain and problems with concentration and attention. He is not currently in any outpatient psychotherapy and does not take any prescribed medication and did not evidence any significant psychiatric, emotional or behavioral problems that would prevent him from interacting in a social or work environment or understanding basic verbal and written instructions.”

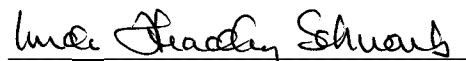
At the hearing, claimant testified that he lives with his aunt and assists with housework by cleaning up the bathroom, mopping the floors, loading the dishwasher, and helping with groceries. Claimant opined that he was capable of working fifteen to twenty hour a week performing a light work job. He expressed a disinclination to work at a “sit down job” because he believes that he has no patience and too hyperactive to just “sit down.”

The treating physician's opinion that claimant is incapable of any lifting as well as incapable of operating foot or leg controls is not supported by acceptable medical evidence consisting of clinical signs, symptoms, laboratory of test findings or evaluative techniques and is not consistent with other substantial evidence in the record. Claimant's physician did not present

sufficient medical evidence to support his opinion. The evidence presented fails to support the position that claimant is incapable of light work activities. Even though the record contains no support for the allegation that claimant has a back problem, given claimant's testimony as to his level of functioning in the home and the community, the undersigned must find that, at the very least, claimant is capable of his past work activities as a machine operator. He is certainly capable of performing simple, unskilled, light work activities on a regular and continuing basis. See Appendix 1 of Subpart P of 20 CFR, Part 404, Table 2, Rule 202.20. The record fails to support the position that claimant is incapable of substantial gainful activity. Accordingly, the department's determination in this matter must be 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.

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

Date Signed: February 10, 2010

Date Mailed: February 16, 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.

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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:

