

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.: 2009-35342
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
November 4, 2009
Wayne County DHS (18)

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 November 4, 2009. Claimant appeared and testified.

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 April 13, 2009, claimant filed an application for MA-P and SDA benefits.
Claimant did not request retroactive medical coverage.

- 2) On June 10, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On August 4, 2009, claimant filed a hearing request to protest the department's determination.
- 4) Claimant, age 34, has an eleventh-grade education.
- 5) Claimant last worked in 2004 as a porter in a car dealership, cleaning out cars. Claimant has also performed relevant work as a hotel housekeeping staff person, manager at a gas station, manager at an adult video store, and as a construction laborer.
- 6) Claimant has a history of a gunshot wound to the left eye in [REDACTED]. Claimant lost complete vision in his left eye.
- 7) Claimant suffers from complete left eye blindness and, per a complete ophthalmologic examination on [REDACTED], a healthy right eye. Claimant has no significant psychological issues which significantly interfere with his ability to do work-related activities.
- 8) As a result of loss of vision in his left eye, claimant does have severe limitations upon his capacity for seeing. This impairment has lasted for twelve months or more.
- 9) Claimant is capable of meeting the physical and mental demands associated with his past employment as well as other forms of light and medium work 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 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 limitation upon his ability to do basic work activities such as the capacity for seeing. 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 prevents him from doing his past relevant work. 20 CFR 416.920(e). In this case, claimant suffered a gunshot wound to the left eye in [REDACTED]

█. Claimant lost complete vision in his left eye. Claimant was evaluated by an ophthalmologist for the █ on █. Upon examination, claimant had best corrected visual acuity of 20/25 on the right side. The consultant diagnosed claimant with astigmatism and left eye blindness. The consultant wrote as follows:

... has a healthy right eye and as such would be expected to function as a monocular individual. I do not see evidence of progressive disease on the right side. As well, he will never have vision with his left-sided visual axis. He should observe monocular precautions and have regular ophthalmologic care.

Claimant was also seen by a consulting psychologist for the █ on █. Claimant's eye contact was reported to be good. The consultant diagnosed claimant with a history of alcohol dependence. His GAF score was 75 to 80. Claimant's prognosis was said to be good. The consultant stated that "it is this examiner's opinion that the claimant's psychological issues will not significantly interfere with their ability to do work-related activities." Claimant's medical record indicated that he had an emergency room visit on █, for an axilla abscess. He underwent incision and drainage. Claimant was also treated for right eye conjunctivitis. Claimant re-visited the emergency room on █, for removal of the wound packing from the lanced abscess. No further difficulties with claimant's right eye were noted. 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 his past work as a hotel housekeeping staff person and/or manager of a gas station or a video store. Claimant cannot be found to be disabled based upon the current medical record. The record supports a finding that, even if claimant were incapable of his past work activities, he is, in general, capable of performing medium or light work activities which could be performed by a

person with monocular vision. Accordingly, claimant cannot be found to be “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).

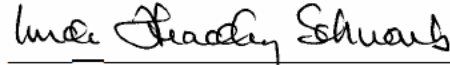
A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (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. In this case, there is insufficient medical evidence to support a finding that claimant is incapacitated or unable to work under SSI disability standards for at least 90 days. Therefore, the undersigned must find that claimant is not presently disabled for purposes of the SDA 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 and State Disability Assistance programs. Accordingly, the department’s determination in this matter is hereby affirmed.

It is further recommended that the department provide claimant with a referral to

[REDACTED]



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

Date Signed: February 2, 2010

Date Mailed: February 3, 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:

[REDACTED]