

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: 2009-364
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 8, 2008
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 December 8, 2008. 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 November 16, 2007, an application was filed on claimant's behalf for MA-P benefits. The application did not request retroactive medical coverage.

(2) On June 25, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.

(3) On September 11, 2008, a hearing request was filed to protest the department's determination.

(4) Claimant, age 52, has a 10th grade education. Claimant was reported to have received special education services while in school.

(5) Claimant last worked in 2004 as a security guard. Claimant has also performed relevant work as an assembly line worker. Claimant's relevant work history consists exclusively of unskilled work activities.

(6) Claimant has a history of peptic ulcer disease, smoking, and substance abuse.

(7) Claimant was hospitalized November 4, 2007 with complaints of shortness of breath. He was diagnosed with pneumonia and right thumb cellulitis. Claimant was discharged on December 5, 2007 with a diagnosis of bilateral MSSA pneumonia as well as right thumb cellulitis with right arm thrombophlebitis, right cephalic vein thrombosis status post venous stripping, polysubstance abuse, and ventilator dependent respiratory failure secondary to septic emboli.

(8) Claimant was discharged to a rehabilitation unit from December 5, 2007 through February 1, 2008 for administration of long-term antibiotics via a PICC line.

(9) Claimant reports occasional pain and spasms of the right upper extremity with occasional difficulty lifting on the right side as well as difficulty with pushing, pulling, and grabbing.

(10) Claimant has severe limitations upon his ability to lift and carry heavy objects with his right upper extremity. Claimant's limitations have lasted or are expected to last for 12 months or more.

(11) 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 simple, 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 (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 he has significant physical limitations upon his ability to perform basic work activities such as lifting, pushing, pulling, reaching, carrying, or handling with his right upper extremity. 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 findings, that claimant may well be capable of his past work as a security guard. Claimant reports occasional problems with his right upper extremity. Such limitations would not necessarily preclude work as a security guard. The undersigned finds that claimant is likely capable of such past work activities. Even if claimant were found to be incapable of past work, he would still be found capable of other types of work activities.

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 your 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 meet the physical and mental demands required to perform simple, unskilled, light work activities. Light work is defined as follows:

Light work. 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. Claimant was hospitalized in November of 2007 with complaints of shortness of breath. He was diagnosed with pneumonia and cellulitis of the right thumb. His discharge diagnosis was bilateral MSSA pneumonia as well as right thumb cellulitis with right arm thrombophlebitis, right cephalic vein thrombosis status post venous stripping, polysubstance abuse, and ventilator dependent respiratory failure secondary to septic emboli. He was discharged to a rehabilitation facility so that he might receive long-term antibiotics via a PICC line. Following discharge from the rehabilitation facility on February 1, 2008, claimant had no further hospitalizations. Claimant was seen by a consulting internist for the department on December 27, 2008. The consulting internist provided the following impression:

RIGHT FOREARM INFECTION: The examinee has a history of right forearm infection possibly secondary to IV drug use. He stopped using heroin in 2008. The examinee states he does not know why he had this infection. The wound is well healed. He states he has occasional pain and spasms. He has occasional difficulty lifting on the right side as well as pushing, pulling, and grabbing items. He also had a tracheostomy at that time and does

have a tracheostomy scar. He continues to smoke. He is at risk for pulmonary infections as well as COPD.

The consultant provided the following medical source statement:

Based upon the examination today, the examinee is able to occasionally lift and carry up to 20 pounds. The examinee is able to stand or walk about six hours in an eight-hour day. The examinee is able to sit about six hours in an eight-hour day. The examinee is able to do simple grasping, reaching, pushing, pulling, and fine manipulation with the left hand as opposed to the right for any repetitive action. The examinee is able to operate foot and leg controls bilaterally.

Claimant had a pulmonary function test during the consulting exam which was found to be normal. The consultant opined that claimant was capable of occasionally lifting up to 20 pounds as well as standing and walking about six hours in an eight-hour workday and sitting about six hours in an eight-hour workday. The consultant found that claimant had no limitations with regard to repetitive activities of the bilateral lower extremities and no limitations with regard to repetitive activities of the upper left extremity. At the hearing, claimant testified that he is capable of using his left hand and arm and that he does drive. Claimant reported that he no longer uses a cane for ambulation. Claimant testified that he continues to smoke, but no longer uses marijuana or cocaine. A careful review of the entire hearing record, including claimant's hospital records and reports from a consulting internist, supports the position that claimant is capable of performing simple, unskilled, light work activities which do not require the use of the bilateral upper extremities. Claimant has failed to establish limitations which would compromise his ability to perform one-handed light work activities on a regular and continuing basis. See Social Security Ruling 87-11c. The loss, or the loss of use, of a hand or arm is not disabling *per se*. Federal law has held that an individual who has lost or who has lost the use of a hand or arm can still engage in substantial gainful activity. See *Knott v Califano*, 559 F2d 279 (5th Cir,

1977). Claimant undisputedly has the full use of his left hand and arm. Substantial evidence in the whole record supports the position that claimant is capable of performing one-armed light work activities.

Considering that claimant, at age 52, is closely approaching advanced age, has a 10th grade education, has an unskilled work history, and has a sustained work capacity for light work, the undersigned finds that claimant's impairments do not prevent him from doing 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 determination in this matter is hereby AFFIRMED.

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

Date Signed: 6/18/09

Date Mailed: 6/22/09

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.

2009-364/LSS

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/pj

cc:

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