

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2009-37227  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date: November 5, 2009  
DHS County: Wayne (82)

**ADMINISTRATIVE LAW JUDGE:** Jonathan W. Owens

**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 5, 2009. 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 April 9, 2009, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to February of 2009.
2. On May 15, 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 10, 2009, a hearing request was filed to protest the department's determination.
4. Claimant, age 46, is a high-school graduate. Claimant reportedly received special education services for the learning disabled while in school.

5. Claimant last worked in 2007 as a car wash attendant. Claimant has also performed factory work and food services work. Claimant's relevant work history consists exclusively of unskilled work activities.
6. Claimant has a history of polysubstance abuse, depression, and learning disability.
7. Claimant was hospitalized [REDACTED] as a result of a lower G.I. bleed.
8. Claimant was re-hospitalized [REDACTED] for rectal bleeding. A colonoscopy documented internal hemorrhoids, anal fissure, and a polyp. Claimant's discharge diagnosis was rectal bleeding secondary to hemorrhoids; status post colonoscopy which showed hemorrhoids, anal fissure and a polyp; left groin abscess, hidradenitis; and hyperlipidemia.
9. Claimant currently suffers from hyperlipidemia, nicotine abuse, history of rectal bleed secondary to hemorrhoids, multiple hidradenities of the scrotum, dysthymic disorder - in partial remission, learning disorder NOS, and alcohol abuse.
10. Claimant has severe limitations with regard to memory and ability to deal with change.
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, at the very least, has the physical and mental capacity to engage in 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 (BAM), the Program Eligibility Manual (BEM) 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 (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 physical and mental limitations upon his ability to perform basic work activities such as understanding, carrying out, and remembering instructions as well as dealing with changes in a routine work setting. 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 his past employment. But, even if claimant were found to be incapable of past relevant work activities, he would still be capable of performing 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 meet the physical and mental demands required to perform simple, unskilled light work. 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).

Objective medical evidence, signs, and symptoms as well as the hearing record as a whole, support a determination that claimant is capable of performing the physical and mental activities necessary for light work activities.

In this matter, claimant was briefly hospitalized in both [REDACTED] as a result of rectal bleeding. A colonoscopy on [REDACTED], documented hemorrhoids, anal fissure, and a polyp. The record indicates that there have been no further hospitalizations. On [REDACTED], a therapist's progress note at [REDACTED], indicated that claimant reported living and working at a motel. Claimant told his therapist that he was earning \$10 to \$15 a day. On November 19, 2009, claimant was evaluated by a consulting psychiatrist for the department. In that interview, claimant reported that he was drinking three times a day, drinking one-fifth of liquor a day. Claimant reported that he watches TV in his free time and "is able to do chores and cook food for the home." The evaluator noted that claimant came with a cane but was walking normally by carrying the cane. The consulting psychiatrist described claimant as in touch with reality with normal psychomotor activity. Claimant's speech was described as clear, coherent, and goal directed with his thinking process well organized and easy to follow. His affect was found to be appropriate to thought content and his mood was calm. The consulting psychiatrist provided the following medical source statement and diagnosis:

The patient is stating that he is able to focus and concentrate well. He is able to understand what he was told. He is able

to understand, remember, and follow through directions. He generally gets along well with others.

Diagnoses:

Dysthymic disorder in partial remission  
Learning disorder NOS  
Alcohol abuse ...  
GAF 60

The consultant found claimant to be moderately limited with regard to the ability to understand and remember detailed instructions; carry out detailed instructions; maintain attention and concentration for extended periods; and complete a normal work day and work week without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. In all other categories of understanding and memory, sustained concentration and persistence, social interaction, and adaption, the consultant found that claimant was not significantly limited.

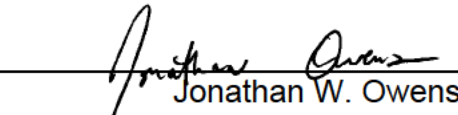
After careful review of the entire hearing record, the undersigned finds that the record does not establish limitations which would compromise claimant's ability to perform a wide range of simple, unskilled light work activities on a regular and continuing basis. The record does not support the position that claimant is incapable of unskilled light work activities.

Considering that claimant, at age 46, is a younger individual, has a high-school education, has an unskilled work history, and has a sustained work capacity for light work activities, the undersigned finds that claimant's impairments do not prevent him from engaging in other work. See 20 CFR, Part 404, Subpart P, Appendix 2, Table 2, Rule 202.17. Even if claimant were limited to unskilled sedentary work activities, claimant would still be found capable of other work activities. Accordingly, the undersigned must find 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.

  
Jonathan W. Owens  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: December 8, 2010

Date Mailed: December 9, 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.

JWO/pf

cc:

