

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.: 2009-3758
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
January 26, 2009
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 January 26, 2009. The 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 Assistants (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 June 13, 2008, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to March 2008.
- 2) On July 28, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.

- 3) On October 23, 2008, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 53, has an associate's degree in business administration.
- 5) Claimant last worked fulltime in [REDACTED] as a customer services representative. Claimant has also performed relevant work as the manager-supervisor of six payroll clerks, as a computer repair person, and a software distribution clerk. Claimant has a semi-skilled work history in which the work skills are transferable.
- 6) Claimant was hospitalized [REDACTED] as a result of endocarditis. His discharge diagnosis was ineffective endocarditis, resolving; severe aortic insufficiency; normocytic/normochromic anemia; reactive thrombocytosis; hyperkalemia; irregular thickened bladder wall; and enterococcus faecalis bacteremia, resolved.
- 7) Claimant was re-hospitalized [REDACTED]. His discharge diagnosis was congestive heart failure, functional class 2-3, currently decompensated, secondary to dietary noncompliance; valvular heart disease with severe aortic insufficiency; infective endocarditis of the aortic valve on IV antibiotics approximately four weeks with history of Enterococcus faecalis; hypertension, hypertensive cardiovascular disease; acute on chronic kidney disease; and anemia.
- 8) Claimant was re-hospitalized [REDACTED]. He underwent a cardiac catheterization which demonstrated no significant coronary artery disease. On [REDACTED], claimant underwent an aortic valve replacement.
- 9) As of November 2008, claimant was capable of sedentary 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 mean 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 physical limitations upon his ability to perform basic work activities such as lifting extremely heavy amounts of weight. 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). In this matter, claimant had been working fulltime as a [REDACTED] [REDACTED] until he fell ill in March 2008. After two hospitalizations and treatment with IV

antibiotics, in [REDACTED], claimant underwent an aortic valve replacement. Thereafter, on [REDACTED] [REDACTED], claimant's treating cardiothoracic surgeon, [REDACTED] reported that claimant was capable of frequently lifting up to 10 lbs and occasionally lifting up to 20 lbs. The surgeon indicated that claimant was capable of standing and walking about 6 hours in an 8 hour workday and sitting about 6 hours in an 8 hour workday. The surgeon indicated that claimant was capable of repetitive activities with the upper and lower extremities and had no mental limitations. On [REDACTED], claimant's treating cardiologist, [REDACTED] opined that claimant's clinical condition was improving and that claimant was capable of occasionally lifting up to 10 lbs as well as standing and walking at least 2 hours in an 8 hour workday. The physician indicated that claimant was capable of repetitive activities with the lower extremities as well as capable of simple grasping, reaching, and fine manipulation with the bilateral upper extremities. [REDACTED] indicated that claimant has no mental limitations. At the hearing, claimant reported that following his surgery, his condition greatly improved. He indicated that his doctor told him to walk 25 minutes at a time, 2-3 times a day. At the hearing, claimant reported that he was currently able to walk for 20 minutes, stand for 20-30 minutes, sit for 20-30 minutes, and lift 20 lbs. He reported that he was capable of lifting 20 lbs on a repetitive basis. Claimant indicated that he was capable of some bending, stooping, and squatting and that he had no problems with gripping or grasping and no problems with range of motion of his shoulders. Claimant testified that he was capable of a sit down job and was working his way back to full time employment. The record does support a record of finding that claimant is capable of his past work. 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, support a finding that claimant is capable of past work activities. Thus, claimant may not be found to be "disabled" for purposes of MA. Also

see *Med Voc* Rule 201.15. Accordingly, the undersigned finds that claimant is not “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: 07/21/09

Date Mailed: 07/23/09

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 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/dj

cc:

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