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.: 2009-4833
Issue No.: 2009
Case No.: [redacted]
Load No.:
Hearing Date:
March 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 March 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 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 June 24, 2008, claimant filed an application for MA-P benefits. Claimant requested MA-P retroactive to March of 2008.

2) On September 5, 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 27, 2008, a hearing request was filed to protest the department's determination.

4) Claimant, age 54, has a high-school education.

5) Claimant reported that he last worked in approximately 2006 performing home improvement and construction projects. Claimant's relevant work history consists exclusively of unskilled work activities.

6) Claimant has a history of alcohol and drug abuse as well as hypertension.

7) Claimant was hospitalized [redacted] as a result of the toxic effect of alcohol. Claimant was found to have heavy ETOH withdrawal syndrome. Claimant underwent an ultrasound of the heart which demonstrated nonischemic cardiomyopathy. Claimant was supposed to be evaluated by cardiac catheterization but left the hospital against medical advice prior to the procedure.

8) Claimant suffers from coronary artery disease, hypertension, hyperlipidemia, chemical dependence, hepatitis C, and occasional low back pain secondary to possible mild wedge deformity of L1.

9) Claimant has severe limitations upon his ability to lift extremely heavy amounts of weight. Claimant's limitations have lasted or are expected to last 12 months or more.

10) 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 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 currently working. Accordingly, 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 physical limitations upon his ability to perform basic work activity such as lifting extremely heavy objects. 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 not capable of lifting extremely heavy objects such as required by his past relevant employment. Claimant has presented the required medical data and evidence necessary to support a finding that he is not, at this point, capable of performing such 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, at the very least, include the ability to meet the physical and mental demands required to perform 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).

There is insufficient objective medical evidence, signs, incentives to support a determination that claimant is incapable of performing the physical and mental activities necessary for a wide range of light work. In this case, claimant has a history of alcohol and drug abuse as well as hypertension. He was hospitalized [redacted] as a result of the toxic effect of alcohol. Claimant was initially found to have heavy ETOH withdrawal symptoms. He was evaluated with an ultrasound of the heart which demonstrated nonischemic cardiolmyopathy. He was supposed to be evaluated by a cardiac catheterization, but, on [redacted], left the hospital against medical advice prior to the procedure. Prior to his hospitalization, a progress note from the Veterans' Administration indicates that claimant presented himself for medical services on [redacted], with complaints of back pain after three hours of pushing a friend in a wheel chair. Claimant was found to have back strain. On [redacted], claimant was seen for a cardiology evaluation at the [redacted]. Claimant reported that he had walked to the [redacted] from the Eight Mile and Van Dyke area. He denied any chest pain or shortness of breath. He denied paroxysmal noctural dyspnea or orthopnea. Claimant was said to have denied lower extremity edema or abdominal bloating and reported being adherent with his medication and denied adverse effects. Claimant was seen again for a cardiology evaluation at [redacted] on [redacted]. Again, he reported walking to the [redacted] facility from the Van Dyke area without any chest pressure or dyspnea. He denied dizziness, paroxysmal noctural dyspnea or orthopnea. Claimant reported that he had no lower extremity edema and reported being adherent to his medications and denying adverse effects. Claimant was again seen at [redacted] for a general medicine follow up on [redacted]. Claimant denied any chest discomfort, shortness of breath, orthopnea, paroxysmal noctural dyspnea, or any gastrointestinal problems. Claimant had an x-ray of the lumbar spine performed at [redacted] on [redacted]. It

provided an impression of a possible mild wedge deformity of the L1 vertebral body. Claimant was seen by a consulting internist for the [redacted] on [redacted]. The examination indicated that, with regard to his chest and cardiovascular system, he had good expansion of the chest and was not using any upper accessory muscles for respiration. His lungs were clear with good breath sounds. His cervical spine had a range of motion within normal limits. His lumbar spine had flexion of 0° to 60°, extension of 0° to 15°, and right and left lateral flexion of 0°to 15°. Straight leg raising test was 0° to 30° on the left and 0° to 45° on the right. Shoulders, elbows, hips, knees, ankles, wrists, and hands were within normal limits as to range of motion. The evaluator provided an assessment that claimant was suffering from hypertension and lower back pain. The evaluator suggested that claimant's complaints of chest wall pain could be related to his long-standing hypertension. Claimant reported that his chest pain was accompanied by shortness of breath. The evaluator noted that claimant had no evidence of compensated congestive heart failure with no ankle swelling, no hepatosplenomegaly, and no jugular vein engorgement. After review of claimant's hospital records and records from the [redacted], claimant has failed to establish limitations which would compromise his ability to perform a wide range of light work activities on a regular and continuing basis. The record fails to support the position that claimant is incapable of light work activities.

Considering that claimant, at age 54, is closely approaching advanced age, has a high-school education, has an unskilled work history, and has a sustained work capacity for light work, this Administrative Law Judge finds that claimant's impairments do not prevent him from engaging in other work. As a guide, see 20 CFR, Part 404, Subpart P, Appendix 2, Table 2, Rule 202.10. 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.

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

Date Signed: January 4, 2010

Date Mailed: January 6, 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]