

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: 2009-6513
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 5, 2009
Monroe 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 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 July 15, 2008, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to April of 2008.

(2) On October 1, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.

(3) On November 12, 2008, a hearing request was filed to protest the department's determination.

(4) Claimant, age 49, is a high school graduate with an associate degree in machine tool technology.

(5) Claimant last worked in February of 2000 as a welder. Claimant has also performed relevant work as an auto mechanic, hanging wall-paper and painting residential and commercial sites, and as a machine operator. Currently, claimant does not have the physical capacity to engage in past work activities.

(6) Claimant has a history of myocardial infraction with angioplasty. In June of 2006 he underwent a quadruple bypass following a myocardial infraction. Claimant also has a reported history of back injury.

(7) Claimant suffers from multi-vessel coronary artery disease (heart catheterization of May 16, 2008 demonstrated moderately impaired LV systolic function), congestive heart failure, peripheral vascular disease, hypercholesterolemia, hypertension, chronic obstructive pulmonary disease, nicotine addiction, gastroesophageal reflux disease, lumbar radiculopathy, and depression.

(8) Claimant has severe limitations upon his ability to walk or stand for prolonged periods of time and/or lift heavy objects. Claimant's limitations have lasted for 12 months or more.

(9) 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, sedentary work activities on a regular and continuing bases.

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, the 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 subsequential 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 walking and standing for long periods of time and lifting 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 the walking, standing, and or heavy lifting required by his past 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 bases does include the ability to meet the physical and mental demands required to perform simple, unskilled sedentary work. Sedentary work is defined as follows:

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are

sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

In this matter, there is insufficient objective medical evidence, signs, and symptoms to support a determination that claimant is incapable of performing physical and mental activities necessary for a wide range of sedentary work. Claimant has a history of myocardial infraction with angioplasty and in June of 2006 underwent a quadruple bypass. Claimant also has a history of back injury. Claimant has had several hospitalizations with complaints of chest pain. A heart catheterization on May 16, 2008 demonstrated moderately impaired LV systolic function. On June 6, 2008, claimant's treating cardiologist gave claimant a functional capacity of Class II on the New York Heart Classification. {Patients with cardiac disease resulting in slight limitation of physical activity. They are comfortable at rest. Ordinary physical activity results in fatigue, palpitation, dyspnea or anginal pain}. The treating cardiologist gave claimant a therapeutic classification of Class C. {Patients with cardiac disease whose ordinary physical activity should be moderately restricted and whose more strenuous efforts should be discontinued}. On June 11, 2008, claimant's treating internist diagnosed claimant with congestive heart failure, peripheral vascular disease, lumbar radiculopathy, hypercholesterolemia, hypertension and gastroesophageal reflux disease. The physician indicated that claimant was capable of occasionally lifting up to 10 pounds but restricted to sitting less than 6 hours in an 8 hour work-day. The physician found that claimant was incapable of operating foot or leg controls on a repetitive bases and incapable of pushing/pulling with the bilateral upper extremities. The physician indicated that claimant was capable of simple grasping, reaching, and fine manipulation with the bilateral upper extremities. The internist indicated that claimant had no mental limitations. On March 17, 2009, claimant's treating cardiologist indicated that claimant appeared to be stable. The cardiologist indicated as follows:

...At this point, (claimant) seems to be stable. I don't see a need to do anything further. He will come back and see me in a year, earlier if there are any problems.”

On April 13, 2009, claimant's treating internist diagnosed claimant with chronic obstructive pulmonary disease, gastroesophageal reflux disease, dyslipidemia, congestive heart failure, coronary artery disease and depression. The physician indicated that claimant's condition was stable and that he was capable of occasionally lifting up to 10 pounds as well as capable of standing and walking at least 2 hours in an 8 hour work-day. The physician indicated that claimant was capable of repetitive activities with the upper and lower extremities and that he had no mental limitations.

After review of claimant's hospital records and reports from claimant's treating physicians, claimant has failed to establish limitations which will compromise his ability to perform a wide range of sedentary work on a regular and continuing bases. See Social Security Rulings 83-10 and 96-9P. The record failed to support the position that claimant is incapable of sedentary work activities.

Considering that claimant, at age 49 is a younger individual, has an associate degree, has an unskilled or semi-skilled work history in which the work skills are not transferable, and has a maximum sustained work capacity which is limited to sedentary work, the undersigned finds that claimant's impairments do not prevent him from doing other work. See 20 CFR, Part 404, Subpart P, Appendix 2, Table 1, Rule 201.28. Accordingly, this Administrative Law Judge must find 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 determination in this matter is hereby AFFIRMED.

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

Date Signed: 9/30/09 _____

Date Mailed: 10/1/09 _____

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 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/at

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