

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: 2009-8055
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 11, 2009
Oakland 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 February 11, 2009. Claimant appeared and testified. Claimant was represented by [REDACTED] of [REDACTED].

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) Claimant, age 44, has a 10th grade education.
- (2) Claimant's last relevant work was performed in 2005 when he "watched tapes on the line." The work was described as sedentary. Claimant has also performed assembly line work

which was described as medium work. Claimant's relevant work history consists exclusively of unskilled work activities.

(3) Claimant has a history of polysubstance abuse.

(4) Claimant was hospitalized [REDACTED] [REDACTED] [REDACTED] [REDACTED] for a drug overdose. His discharge diagnosis was drug overdose, acute renal failure, unstable angina due to cocaine abuse, TIA, Benzodiazepine withdrawal, alcohol withdrawal, and cocaine abuse.

Claimant has had no further hospitalizations.

(5) Claimant suffers from pain of the neck and back as well as torn right rotator cuff.

(6) Claimant has severe limitations upon his ability to walk and stand for long periods of time and lift heavy objects. Claimant's limitations have lasted or are expected to last 12 months or more.

(7) 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 is has the physical or mental capacity to engage in simple, unskilled, sedentary and 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 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 to 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 to 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 is not capable of his past work when he "watched tapes on the line." Such work was described as sedentary. (See Department Exhibit #1, page 15). The record fails to support the position that claimant is incapable of performing such past work. Nonetheless, even if claimant was incapable of past work activities, he would still be found 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 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 light work. 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. In this case, claimant has a history of polysubstance abuse. He was hospitalized [REDACTED] as a result of a drug overdose. His discharge diagnosis was drug overdose, acute renal failure, unstable angina due to cocaine abuse, TIA, Benzodiazepine withdrawal, alcohol withdrawal, and cocaine abuse. Claimant had no further hospitalizations. On [REDACTED], claimant's treating physician [REDACTED] diagnosed claimant with lumbar spine sprain and right shoulder tendonitis. The physician opined that claimant was capable of frequently lifting up to 10 pounds and occasionally lifting up to 25 pounds. The treating physician indicated that claimant had no limitations with regard to repetitive activities of the upper and lower extremities and no mental limitations. Claimant was seen by a consulting internist for the department on [REDACTED]. The consultant diagnosed claimant

with pain of the neck and back, torn right rotator cuff, and history of cerebral vascular accident.

The consultant provided the following conclusion:

This gentleman is found to have the above illnesses. His neurological examinations are really unremarkable and there is no localized neurological deficit. The motion of his neck, back and right shoulder are limited but questionable. In conclusion, I feel that the patient is employable but should avoid prolonged sitting, standing, pushing, pulling, reaching up with his right arm, frequent bending and heavy lifting.

Claimant was also seen by a consulting ophthalmologist for the department on

██████████. The consultant found that with correction, claimant had visual acuity on the right of 20/80 and on the left of 20/50. The consulting ophthalmologist indicated that claimant suffers from hyperopia and isotropia. The consultant found claimant's prognosis to be stable.

After careful consideration of the entire hearing record, the undersigned finds that the record will not support a finding that claimant is incapable of light work activities.

Considering that claimant, at age 44, is a younger individual, 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. See 20 CFR, Part 404, Subpart P. Appendix 11, Table 2, Rule 202.17. Accordingly, the undersigned must find that claimant is not disabled for purposes of the MA program. Further, claimant is certainly capable of sedentary work activities. See Med-Voc Rule 201.24. Accordingly, the department's determination in this matter is hereby affirmed.

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: 4/23/09

Date Mailed: 4/24/09

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 mailing date of the rehearing decision.

LSS/cv

cc:

