

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.: 2009-9759
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 19, 2009
Macomb County DHS (20)

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 19, 2009. The Claimant appeared and testified. The 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) On January 19, 2007, an application was filed on applicant's behalf for MA-P. The application requested MA-P retroactive to October 2006.
- (2) On June 23, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.

- (3) On September 18, 2008, a hearing request was filed to protest the department's determination.
- (4) At the hearing, claimant's authorized representative requested a closed period of eligibility from October 2006 through March 2009.
- (5) Claimant, age 46, has a high school education and some college.
- (6) Claimant last worked in October 2006 when self employed performing "tile work". Claimant has also performed work as a maintenance supervisor at a manufactured home community. Claimant's relevant work experience consists exclusively of work activities involving medium to heavy work.
- (7) Claimant was hospitalized [REDACTED] as a result of chest tightness and dyspnea. He underwent a cardiac catheterization with stent placement. Claimant was discharged [REDACTED] "stable for return to work with no heavy lifting over 25 lbs." (Department Exhibit 1, page 8.)
- (8) Claimant suffers from coronary artery disease with history of stent placement, hypertension, and hyperlipidemia.
- (9) Claimant has severe limitations upon his ability to lift extremely heavy objects. Claimant's limitations have lasted for 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 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, 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 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 claimant’s ability to perform basic work activities such as 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 heavy lifting and intense physical exertion required by his past employment. Claimant has present the required mental 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 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. Claimant suffered a myocardial infarction on [REDACTED]

██████████. He underwent cardiac catheterization and stent placement. The discharge summary indicated that claimant was “stable for return to work with no heavy lifting over 25 lbs”. (See department Exhibit 1, page 8.) The discharge instructions provided to claimant on October 27, 2006 indicated that, with regard to activity, “do not lift more than 10 lbs for one week.” (See claimant Exhibit A, page 3.) On ██████████, claimant’s primary care provider ██████████ diagnosed claimant with coronary artery disease with stent times 1, hypertension, and hyperlipidemia. The physician indicated that claimant was capable of lifting up to 10 lbs but limited to standing and walking less than 2 hours in an 8 hour work day and sitting less than 6 hours in an 8 hour work day. ██████████ reported that claimant was capable of operating foot or leg controls on a repetitive basis as well as capable of simple grasping, reaching, and fine manipulation with the bilateral upper extremities. The physician indicated that claimant was incapable of pushing/pulling with the bilateral upper extremities. The physician noted “problem with patient is risk of heavy physical exertions affect on his arterial fibrillation.” The physician indicated that claimant had no mental limitations. It is the finding of this Administrative Law Judge that ██████████ opinion as to claimant’s physical limitations with regard to walking, standing, and sitting were not support by acceptable medical evidence consisting of clinical signs, symptoms, laboratory or test findings, or evaluative techniques and is not consistent with other substantial evidence in the record. Claimant’s physician did not present sufficient medical evidence to support his opinion as to claimant’s physical limitations in ██████████. Claimant did undergo a stress test on ██████████. He was found to have a left ventricular ejection fraction of 43%. The evidence presented fails to support the physician that claimant, following his ██████████ myocardial infarction, was incapable of a wide range of light work activities. The hospital discharge instructions have limited claimant to lifting up to 10 lbs for one week.

The Claimant may appeal the Decision and Order to the Circuit 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/jlg

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