

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.: 2009-12871
Issue No.: 2009 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
April 1, 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 April 1, 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) and State Disability Assistance (SDA) programs?

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 3, 2008, an application was filed on claimant's behalf for MA-P and SDA benefits. The application requested MA-P retroactive to May of 2008.
- 2) On October 9, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On January 6, 2009, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 50, has an eighth grade education.
- 5) Claimant last worked in May of 2008 performing roofing and dry wall work. Claimant has also performed work as a general laborer, shipping and receiving clerk, delivery person, and painting of machinery racks. Claimant's relevant work history consists exclusively of unskilled work activities.
- 6) Claimant was hospitalized [REDACTED] for a myocardial infarction. Claimant underwent a heart catheterization and unsuccessful angioplasty.
- 7) Claimant was hospitalized [REDACTED] when he underwent coronary artery graft bypass.
- 8) Claimant currently suffers from significant coronary artery disease, hypertension, and history of smoking and chronic obstructive pulmonary disease.
- 9) Claimant has severe limitations upon his ability to walk or stand for prolonged periods of time as well as lifting heavy objects. 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 has the physical and mental

capacity to engage in simple, unskilled, 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 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 claimant 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 evidence and data 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). Once claimant reaches Step 5 in the sequential review process, claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that the claimant has the residual functional capacity for substantial gainful activity.

The undersigned Administrative Law Judge finds that claimant’s residual functional capacity for work activities on a regular and continuing basis does include the ability to make the physical and mental demands required to perform simple, unskilled sedentary work. Sedentary work is defined as follows:

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 case, claimant was hospitalized [REDACTED] following a myocardial infarction. Claimant underwent an emergency heart catheterization and unsuccessful angioplasty. He was re-hospitalized [REDACTED] when he underwent a myocardial revascularization with the left internal mammary artery graft. On [REDACTED], claimant’s treating cardiovascular surgeon opined that claimant was limited to occasionally

lifting up to 10 pounds. On [REDACTED], claimant was seen by a consulting internist for the Disability Determination Service. The consultant provided an impression of hypertensive cardiovascular disease and chronic heart failure. The physician stated as follows:

“Based upon today’s examination, the claimant should be able to get back to work full time, however he needs cardiac assessment and evaluation for cardiac rehab prior to full working capacity. At this time the claimant should be able to work in a seated position for up to 6-8 hours per day. Walking should be limited to about one block. Lifting, carrying, pushing and pulling ability is limited secondary to significant chest pain and scarring from the sternal scar, which seems to have not healed completely. The claimant should be able to push, pull, lift or carry up to ten pounds on an occasional basis only. ... There is limitation on climbing stairs, ropes, ladders or scaffolding until he gets complete cardiac clearance since his open heart surgery.”

Claimant was seen by another consulting internist for the Disability Determination Service on

[REDACTED]. The consultant diagnosed claimant with coronary artery disease. The consultant wrote as follows:

“The examinee has a history of coronary artery disease, status post coronary artery bypass surgery. The examinee does have a history of cardiomyopathy, coronary artery disease, and status post CABG, done in 5/2008. He continues to have occasional episodes of midsternal chest pain on a daily basis and occasional episodes of shortness of breath, associated with this problem. He is being followed by his primary care physician/cardiologist and taking medication as he can afford it. ... Based upon the exam, the examinee is able to occasionally lift and carry 10 to 15 pounds without prolonged exertion. He may need assessment for further cardiac rehab due to the extensive heart disease that he has. The examinee is able to stand or walk about two to four hours in an eight hour day. The examinee is able to sit about six to eight hours in an eight hour day. The examinee is able to do simple grasping, reaching, pushing, pulling, and fine manipulation. The examinee is able to operate foot or leg controls occasionally. He should avoid extremes of weather as well as extremes of height. Again, he does need cardiac clearance.”

Given the hearing records, the undersigned finds that, at best, claimant is capable of simple, unskilled sedentary work activities. The record will not support a finding that claimant is capable of a good deal of walking or standing such as would be required from light work activities. See 20 CFR 416.967(b). Light work activities require the ability to stand or walk at least 6 hours in an 8 hour work day. See Social Security Ruling 83-10. Also see Social Security Ruling 83-14 which suggests that the major difference between sedentary and light work, especially for those individuals at an unskilled level, is that most light work jobs will require the ability to stand or walk most of the day. Thus, claimant must be found to be limited to sedentary work activities.

Considering that claimant, at age 50, is closely approaching advanced age, has an eighth grade education, has an unskilled work history, and has a maximum sustained work capacity which is limited to sedentary work, this Administrative Law Judge finds that claimant's impairment does prevent him from doing other work. See 20 CFR Part 404, Subpart P, Appendix 2, Table 1, Rule 201.09. The record fails to support the finding that claimant has the residual functional capacity for substantial gainful activity. The department has failed to provide vocational evidence which establishes that, given claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which claimant could perform despite his limitations. Accordingly, the undersigned concludes that claimant is disabled for the purposes of the MA program.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R

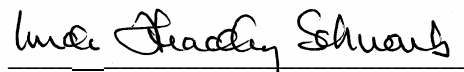
400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM Item 261. Inasmuch as claimant has been found “disabled” for purposes of MA, he must also be found “disabled” for purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant meets the definition of medically disabled under the Medical Assistance and State Disability Assistance programs as of May of 2008.

Accordingly, the department is ordered to initiate a review of the July 3, 2008, application, if it has not already done so, to determine if all other non medical eligibility criteria are met. The department shall inform claimant and his authorized representative of its determination in writing. Assuming that claimant is otherwise eligible for program benefits, the department shall review claimant’s continued eligibility for program benefits in November of 2010.


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

2009-12871/LSS

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:

