

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.: 2009-15243
Issue No.: 2009-4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
May 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 May 26, 2009. The claimant appeared and testified. Following the hearing, the record was kept open for the receipt of additional medical evidence. An additional document was submitted and considered.

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 September 23, 2008, claimant filed an application for MA-P and SDA benefits. Claimant did not request retroactive medical coverage.
- 2) On January 26, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On February 3, 2009, claimant filed a hearing request to protest the department's determination.
- 4) Claimant, age 51, has an eleventh grade education and has earned a GED.
- 5) Claimant last worked in 1996 performing heavy manual labor. Claimant was in prison for twelve years and was released in 2008.
- 6) Claimant has a history of alcohol abuse, closed head injury, open reduction and internal fixation of the left upper extremity, right ankle tendon repair, and a colostomy bag placed in [REDACTED] secondary to diverticulosis and hemicolectomy.
- 7) Claimant currently suffers from history of alcohol abuse, hyperlipidemia, abdominal wall left lower quadrant colostomy (in need of take down surgery but requiring insurance), allergic rhinitis, and dysthmic disorder.
- 8) Claimant has severe limitations upon his ability to lift extremely heavy objects. Claimant's limitations have lasted for twelve 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 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 claimant has significant physical limitations upon his ability to perform basic work activities 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 the 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 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 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. When claimant was released from prison in [REDACTED], the Michigan Department

of Corrections indicated that his only unresolved diagnosis was hyperlipidemia. On [REDACTED], a family medicine physician diagnosed claimant as having a colostomy which needed to be taken down but required insurance. The only abnormal findings in claimant's examination were poor dental health and his colostomy. The physician indicated that claimant had no physical limitations and was capable of frequently lifting up to twenty-five pounds and occasionally lifting up to fifty pounds. The physician indicated that claimant was capable of standing or walking about six hours in an eight-hour work day and sitting about six hours in an eight-hour work day. The physician indicated that claimant had no restrictions with regard to repetitive activities of the upper and lower extremities and no mental limitations. Claimant was seen by a consulting internist for the [REDACTED] on [REDACTED]. The physician was unable to discern any significant physical limitations. He provided the following impressions:

- (1) History of closed head injury. The patient currently has no major difficulty with performing activities of daily living.
- (2) Fracture of the left elbow and forearm requiring surgery due to a car accident injury.
- (3) History of alcohol and drug abuse. Psychiatric evaluation is recommended.
- (4) Right ankle tendon repair.
- (5) Hyperlipidemia.
- (6) Diverticulitis requiring laparotomy and colostomy.

Claimant was seen by a psychiatrist for the [REDACTED] on [REDACTED]. The psychiatrist diagnosed claimant with dysthymic disorder and history of alcohol abuse. Claimant was given a current GAF score of 60. Claimant was evaluated by an internist on [REDACTED]. The evaluator diagnosed claimant with colostomy secondary to hemicolectomy,

dizziness, and allergic rhinitis. Claimant was found to have a completely normal physical examination other than the colostomy. This physician opined that claimant was capable of frequently lifting up to ten pounds and capable of sitting about six hours in an eight-hour work day. The physician indicated that claimant was capable of repetitive activities with the upper and lower extremities and had no mental limitations. After a review of claimant's medical records and evaluations by treating and consulting physicians, 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 51, is a younger individual, has an eleventh grade education, an unskilled work history, and 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. See 20 CFR, Part 404, Subpart P, Appendix 2, Table 2, Rule 202.10. Accordingly, the undersigned finds that claimant is not presently disabled for purposes of the MA program.

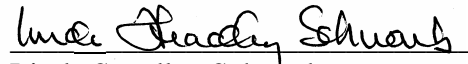
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are 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. In this case, there is insufficient medical evidence to support a finding that claimant is incapacitated or unable to work under SSI disability standards for at least 90 days. Therefore, the undersigned finds that claimant is not presently 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 the Department of Human Services properly determined that claimant is not “disabled” for purposes of the Medical Assistance and State Disability Assistance programs. 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 14, 2010

Date Mailed: January 15, 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.

2009-15243/LSS

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:

