

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.: 2009-22827
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
July 15, 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 July 15, 2009. Claimant appeared and testified. Claimant was represented by his [REDACTED], [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 November 12, 2008, claimant filed an application for MA-P benefits.
Claimant did not request retroactive medical coverage.

- 2) On January 22, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On March 10, 2009, claimant filed a hearing request to protest the department's determination.
- 4) Claimant, age 28, is a high-school graduate with some college.
- 5) Claimant last worked in 2006 as a customer services representative at a help desk. Claimant has also performed work as a technical support IT person and as a retail sales person. Claimant's work history consists of unskilled and semi-skilled work activities in which the skills are transferable.
- 6) Claimant has a history of fibromyalgia and vicadin abuse.
- 7) Claimant has had no recent hospitalizations.
- 8) Claimant currently suffers from fibromyalgia, hypertension, cervical radiculopathy, bilateral mild carpal tunnel syndrome, depression, insomnia, anxiety, and irritable bowel syndrome.
- 9) Claimant has severe limitations upon his ability to walk or stand for prolonged periods of time and lift extremely heavy objects. Claimant's limitations have lasted twelve months or more.
- 10) Claimant is capable of performing the physical and mental activity associated with his past employment as well as other forms of light work 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 prolonged periods of time and 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.

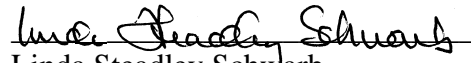
In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant’s impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant’s medical record will 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 him from doing past relevant work. 20 CFR 416.920(e). In this case, claimant has a history of fibromyalgia. An MRI of claimant’s cervical spine performed on [REDACTED], documented mildly centrally bulging discs at C3-C4 and C6-C7. There were no focal disc protrusions. Nerve conduction study performed on [REDACTED], documented bilateral mild carpal tunnel syndrome and bilateral C5-C6

radiculopathy. A psychiatric evaluation performed on [REDACTED], resulted in a diagnosis of anxiety disorder, not otherwise specified (rule out generalized anxiety disorder); depressive disorder, not otherwise specified; rule out somatoform disorder, pain syndrome; and rule out schizoid personality traits. On [REDACTED], claimant's treating rheumatologist diagnosed claimant with fibromyalgia. His comorbid conditions were said to include depression, insomnia, anxiety, and irritable bowel syndrome. On [REDACTED], claimant's internist diagnosed claimant with fibromyalgia, hypertension, cervical radiculopathy, and carpal tunnel syndrome. The physician opined that claimant was capable of occasionally lifting up to twenty pounds and capable of standing and walking at least two hours in an eight-hour work day. The physician indicated that claimant was capable of simple grasping and fine manipulation with the bilateral upper extremities. On [REDACTED], claimant was seen by his treating rheumatologist. Claimant reportedly told the rheumatologist that he was able to manage his pain through exercise and that he had weaned himself off of all pain medication. An echocardiogram performed on [REDACTED] [REDACTED], was normal. At the hearing, claimant testified that he was capable of lifting twenty-five pounds. It is the finding of this Administrative Law Judge, based upon all the medical evidence and objective, physical findings, that claimant is capable of his past work. The record fails to support a finding that claimant is physically and/or mentally incapable of performing work as a services representative or technical support person. Accordingly, claimant cannot be found to be disabled for purpose of MA. Further, the record supports the finding that claimant is capable of performing light work activities on a regular and continuing basis. See Appendix 1 of Subpart P of 20 CFR, Part 404, Table 2, Rule 202.22. 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.


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

Date Signed: February 9, 2010

Date Mailed: February 12, 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:

