

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.: 2009-23544

Issue No.: 4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

July 20, 2009

Macomb County DHS (12)

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 20, 2009. The claimant appeared and testified.

ISSUE

Did the Department of Human Services (DHS or department) properly determine that claimant is not "disabled" for purposes of the State Disability Assistance (SDA) 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 October 20, 2008, claimant applied for SDA benefits.
- (2) On January 24, 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 18, 2009, claimant filed a hearing request to protest the department's determination.

- (4) Claimant, age 50, has a high school education.
- (5) Claimant last worked in 2007 as a truck driver. Claimant has also performed relevant work as a machine operator, shipping and receiving clerk, and as a residential painter. Claimant's relevant work history consists exclusively of unskilled work activities.
- (6) Claimant has a history of a closed head injury in 1997 and a reported onset of seizures in 2007.
- (7) Claimant suffers from generalized osteoarthritis, history of closed head injury, seizure disorder, and depressive disorder. Claimant's GAF score in July 2008 was 61 to 65.
- (8) Claimant is a recipient of the Adult Medical Program and regular treatment by a physician and takes his prescribed medication in compliance with his doctor's directions. Claimant is not currently prescribed or taking any medication for seizures.
- (9) Claimant has severe limitations upon his ability to lift heavy amounts of weight. Claimant's limitation has lasted or is 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, light work activities on a regular and continuing basis.

CONCLUSIONS OF LAW

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 considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) standards for at least 90 days. Other than the more limited 90-day duration, the department must use the same operative definition for “disabled” when considering eligibility for SDA as is used for SSI under Title XVI of the Social Security Act. 42 CFR 435.540(a). Disability is defined as follows:

“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 SDA benefits at this step in the sequential evaluation process.

In general, in order to be considered disabled for purposes of SDA, 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 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 psychiatric findings, that claimant may well be capable of his past work as a shipping and receiving clerk. But, even if claimant can no longer perform such work activities, he will still be found to be 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 you 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).

In this case, claimant suffered a closed head injury in 1997. Thereafter, he resumed work as a truck driver and continued to work as a truck driver until 2007. At that point, claimant reported that he began to have “blackouts” or seizures. Claimant is now a recipient of the Adult Medical Program and has access to medical care and prescriptions. Claimant reports that he sees his treating physician on a regular basis and takes all medication prescribed as directed. Claimant indicated that his treating physician has given claimant no restrictions. Claimant’s treating physician is not prescribing seizure medication to claimant at this point. On [REDACTED], claimant’s primary care physician diagnosed claimant with a history of motor vehicle accident with closed head injury, back pain, seizure disorder, and hypertension. The physician indicated that claimant is capable of simple grasping, reaching, and pushing/pulling with the bilateral upper extremities. On [REDACTED], a consulting psychological evaluation performed for the Disability Determination Service resulted in a diagnosis of a depressive disorder with a current GAF score of 61 to 65. Claimant was seen by a consulting psychiatrist for the Disability Determination Service on [REDACTED]. The psychiatrist diagnosed claimant with traumatic brain injury and generalized osteoarthritis. X-rays of claimant’s bilateral knees and lumbar spine performed on [REDACTED] revealed mild to moderate osteoarthritic changes. A careful review of the hearing record supports a finding that claimant is capable of simple, unskilled, light work activities. The record does not support a finding that claimant is incapable of substantial gainful activity. Considering that claimant, at age 50, is closely approaching advanced age, has a high school education, has an unskilled work history, and has a work capacity for light work activities, the undersigned finds that claimant’s impairments do not prevent him from engaging in other work. As a guide, see 20 CFR, Part 404, Subpart P, Appendix 2, Table 2, Rule 202.13.

Accordingly, 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 SDA program. The department’s decision in this matter is **HEREBY, AFFIRMED**. It is recommended that the department provide claimant with a referral to Michigan Rehabilitative Services.

Linda Steadley Schwarb

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

Date Signed: 10/22/09

Date Mailed: 10/22/09

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 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 recip date of the rehearing decision.

LSS/jlg

cc:

