

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████

Claimant

Reg. No.: 2009-25095

Issue No.: 2009

Case No.: ██████████

Load No.: ██████████

Hearing Date:

July 27, 2009

Wayne County DHS (82)

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 27, 2009. The claimant appeared and testified. The claimant was represented by ██████████ of ██████████.

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 12, 2009, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to October 2008.
- (2) On February 5, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.

- (3) On April 22, 2009, a hearing request was filed to protest the department's determination.
- (4) Claimant, age 57, has a 10th grade education.
- (5) Claimant last worked in 2007 as a lunch room monitor for a public school. Claimant has also performed relevant work as a janitor, maintenance worker, security guard, fast food preparer, and as a landscaping employee. Claimant's relevant work history consists exclusively of unskilled work activities.
- (6) Claimant has a history of seizures and hypertension.
- (7) Claimant was hospitalized [REDACTED] through [REDACTED] with complaints of chest pain. A stress test demonstrated no evidence of reversible ischemia. Claimant was discharged with a diagnosis of atypical chest pain secondary to nicotine abuse and marijuana use; epileptic disorder; and poor compliance with medical program.
- (8) Claimant was rehospitalized [REDACTED] through [REDACTED] with complaints of abdominal discomfort and vomiting of blood. Following a diagnostic esophagogastroduodenoscopy, claimant was diagnosed with a peptic ulcer. His discharged diagnosis was peptic ulcer, anemia, hypertension, hyperlipidemia, and seizure status.
- (9) Claimant currently suffers from hypertension, seizure disorder, hyperlipidemia, and nicotine dependence.
- (10) Claimant has severe limitations upon his ability to lift weight in excess of 50 lbs. Claimant's limitations have lasted for 12 months or more.
- (11) 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 past work activities as well as other forms of medium 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, 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 in excess of 50 lbs. 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). In this case, claimant suffers from a seizure disorder, hyperlipidemia, hypertension, and nicotine dependence. He was hospitalized on [REDACTED] with complaints of chest pain. Following a stress test which demonstrated no evidence of reversible ischemia, claimant was discharged on [REDACTED] with a diagnosis of atypical chest pain secondary to nicotine abuse and marijuana use; epileptic disorder; and poor compliance with medical program. Claimant was rehospitalized [REDACTED] following complaints of abdominal pain and vomiting blood. He underwent a diagnostic esophagogastroduodenoscopy and was diagnosed with a peptic ulcer. His discharged diagnosis on [REDACTED] was peptic ulcer, anemia, hypertension, hyperlipidemia, and seizure status. On [REDACTED], claimant's primary care physician diagnosed claimant with hypertension, epilepsy, hypercholesterolemia, and tobacco abuse. The physician opined that claimant was capable of frequently lifting up to 25 lbs and occasionally lifting up to 50 lbs. The physician indicated that claimant was capable of standing and walking at least 2 hours in an 8 hour work day and sitting about 6 hours in an 8 hour work day. The physician found that claimant had no limitations with regard to repetitive activities of the upper and lower extremities and no mental limitations. At the hearing, claimant testified that his last seizure had been approximately two months prior to the hearing. His previous seizure occurred approximately one month earlier. Claimant reported that his hypertension was controlled with medication. Claimant complained of shortness of breathe with exertion, but acknowledged that he was continuing to smoke. It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings, as well as claimant's own testimony as to his ability to function in his

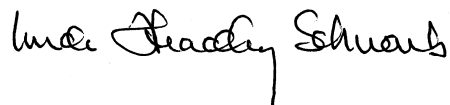
home and the community, that claimant is capable of his past work as a security guard.

Accordingly, claimant can not be found to be disabled for purposes of the MA program. Further, the record supports a finding that claimant is, in general, capable of performing medium work activities on a regular and continuing basis. See 20 CFR 416.967(c); Appendix 1 of Subpart P of 20 CFR, Part 404, Table 3, Rule 203.11. Accordingly, the department's determination in this matter must be 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 determination in this matter is HEREBY, AFFIRMED.



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

Date Signed: 10/28/09

Date Mailed: 10/28/09

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 receipt date of the rehearing decision.

LSS/jlg

cc:

