

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.: 2009-25277  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
September 3, 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 September 3, 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) 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 April 30, 2008, an application was filed on claimant's behalf for MA benefits. The application requested MA-P retroactive to January of 2008.

- 2) On January 28, 2009, the department notified claimant that it had denied her application based upon the belief that claimant did not meet the requisite disability criteria. The department failed to send a copy of the denial notice to claimant's authorized representative.
- 3) On April 24, 2009, a hearing request was filed on claimant's behalf to protest the department's determination.
- 4) Claimant, age 44, has a tenth grade education.
- 5) Claimant has been working part time as an adult home health care provider since December of 2008. Claimant has also performed relevant work as a server at [REDACTED], a waitress, and as a security guard. Claimant's relevant work history consists exclusively of unskilled work activities.
- 6) Claimant has a history of Arnold-Chiari malformation, depression, seizures with onset as a young adult, and HIV positive which was diagnosed in [REDACTED].
- 7) Claimant was hospitalized [REDACTED] following a motor vehicle accident. She was hospitalized for neck pain and underwent a neurosurgery evaluation where she was cleared. Her symptoms improved and at discharge she had no other complaints.
- 8) Claimant was hospitalized [REDACTED] for lethargy and seizures. She was started on Keppra and discharged to the home of her parents.
- 9) Claimant was re-hospitalized [REDACTED] for recurrent seizures.
- 10) Claimant was hospitalized [REDACTED] for depression.

- 11) Claimant currently suffers from hypertension, seizure disorder, chronic headaches, anemia, and is HIV positive.
- 12) Claimant has the Adult Medical Program and does have access to doctor visits and prescriptions.
- 13) At the hearing, claimant testified that, in addition to working part time as an adult home health care provider since December of 2008, she is currently going to school for four hours a day, five days a week.
- 14) Claimant has severe limitations upon her ability to walk or stand for prolonged periods of time and/or lift extremely heavy objects. Claimant's limitations have lasted or are expected to last twelve months or more.
- 15) Claimant's complaints and allegations concerning her 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 she 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, at the time of the hearing, claimant testified that she has been working part time as an adult home health care provider since December of 2008. It does not appear that claimant's earnings have reached the level that would suggest that claimant has been engaged in substantial gainful activity. (Department Exhibit #3.) See 20 CFR 416.974. Accordingly, 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 (6<sup>th</sup> 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 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 her from doing her past relevant work. 20 CFR 416.920(e). In this case, claimant has performed past relevant work as a waitress, security guard, and server at [REDACTED]. The record supports a finding that claimant has the

physical and mental capacity to engage in such past work activities. But, even if claimant were found to be incapable of past work activities, she would still be found capable of 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 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. Claimant's treating infectious disease specialist opined on [REDACTED], that claimant suffers from symptomatic HIV infection, seizure disorder, depression, and hypertension. The treating physician opined that claimant is capable of frequently lifting ten pounds and occasionally lifting up to twenty-five pounds. The specialist indicated that claimant

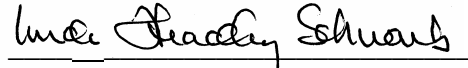
was capable of standing or walking at least two hours in an eight-hour work day and sitting about six hours in an eight-hour work day. The physician indicated that claimant was capable of repetitive activities with the bilateral upper extremities and that she had no mental limitations. At the hearing, claimant reported that she was currently working as an adult home health care provider and that she was attending school for four hours a day, five days a week. After a review of claimant's hospital records, a medical report from claimant's treating physician, and test results, claimant has failed to establish limitations which would compromise her 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.

Considering that claimant, at age 44, is a younger individual, has a tenth grade education, has an unskilled work history, and has a sustained work capacity for light work, this Administrative Law Judge finds that claimant's impairments do not prevent her from engaging in other work. See 20 CFR, Part 404, Subpart P, Appendix 2, Table 2, Rule 202.17. Even if claimant were found to be limited to sedentary work, she would still be found capable of other work. See Med Voc Rule 201.24. Accordingly, the undersigned finds that claimant is not presently disabled for purposes of the MA 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 program. Accordingly, the department’s decision in this matter is hereby affirmed.

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

Date Signed: January 12, 2010

Date Mailed: January 14, 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:

