

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.: 2009-25385
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
August 3, 2009
Macomb County DHS (36)

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 August 3, 2009. 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 January 9, 2009, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to December of 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 May 4, 2009, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 49, has an eleventh-grade education.
- 5) Claimant last worked in 2001 as a child care provider. Claimant has also worked cleaning offices and as a cashier in a gas station. Claimant's relevant work history consists exclusively of unskilled work activities.
- 6) Claimant was hospitalized [REDACTED] as a result of swelling, erythema, and pain of the right ear secondary to having a piece of cotton stuck in her right ear, per claimant, for about four years. Claimant's discharge diagnosis was diabetes mellitus, right otitis externa, non compliance, hypertension, gastroesophageal reflux disease, and history of asthma. Claimant has had no further hospitalizations.
- 7) Claimant currently suffers from morbid obesity (5' 1" at 414 pounds), bronchial asthma, hypertension, non-insulin diabetes mellitus, and very mild degenerative osteoarthritis of the bilateral knees.
- 8) Claimant has severe limitations upon her ability to walk and stand for prolonged periods of time and lift heavy objects. Claimant's limitations have lasted twelve months or more.
- 9) 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 unskilled, sedentary 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, 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 she has significant physical limitations upon her ability to perform basic work activities such as walking and standing for long periods of time and lifting 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 prolonged walking and standing and/or heavy lifting required by her past employment. Claimant has presented the required medical data and evidence necessary to support a finding that she 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 sedentary work. Sedentary work is defined as follows:

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

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 sedentary work. In this case, claimant was hospitalized [REDACTED] as a result of a right ear infection secondary to having a piece of cotton stuck in her right ear, per claimant, for about four years. Her discharge diagnosis was diabetes mellitus, right otitis externa, non compliance, hypertension, gastroesophageal reflux disease, and history of asthma. Claimant has had no further hospitalizations. A stress test performed on [REDACTED], was normal. Claimant was seen by a consulting internist for the department on [REDACTED]. An x-ray of claimant's bilateral knees ordered by the consultant revealed mild degenerative changes. The consultant also ordered a pulmonary function test which revealed mild restriction with no obstruction. Following the examination, the consultant made the following diagnosis:

1. Morbid obesity – weight of 414 pounds.
2. Diabetes – per history, which is well controlled on medication.
3. Hypertension – not controlled. She needs to have the blood pressure rechecked in one to two weeks with appropriate blood pressure cuff. If it is still high at that time she would need to be put on medication.
4. Bronchial asthma – on clinical examination of the respiratory system, the chest is symmetrical and equal to expansion. The lung fields are equal to auscultation and percussion bilaterally. There are no rales, rhonchi or wheezing noted even on forced expiration or inspiration. No retraction of intercostal muscles noted. No accessory muscle usage noted. No cyanosis or clubbing of the fingers noted. There is no tachypnea or tachycardia. PST done today shows mild restriction. There is no obstruction. It is most likely because of her morbid obesity.
5. Pain in both knee joints – on clinical examination, both knee joints are unremarkable. Pain could be secondary to very mild degenerative osteoarthritis due to morbid obesity.
6. Lower back pain – on clinical examination, the lower back is unremarkable. The cane is not medically necessary for ambulation. The patient is over-reacting for the pain and seems to be malingering.

The consultant provided the following medical source statement:

“Based on today’s examination, the patient should be able to work 8 hours a day. There should not be limitation in walking, carrying, pushing or pulling. Hand grip strength is normal and equal in both hands. Pinch strength is normal and equal in both hands. Her morbid obesity may limit her climbing stairs, ropes, ladders or scaffolding. No limitation in hearing or speech and no mental impairment is noted.”

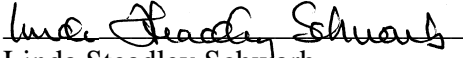
The consultant opined that claimant had no physical or mental limitations.

After review of claimant’s hospital records, a report from a consulting physician, and test results, claimant has failed to establish limitations which would compromise her ability to perform a wide range of sedentary work activities on a regular and continuing basis. See Social Security Rulings 83-10 and 96-9p. The record fails to support the position that claimant is incapable of sedentary work.

Considering that the claimant, at age 49, is closely approaching advanced age, has an eleventh-grade education, has an unskilled work history, and has a sustained work capacity for sedentary work, this Administrative Law Judge finds that claimant’s impairments do not prevent her from doing other work. See 20 CFR, Part 404, Subpart P, Appendix 2, Table 1, Rule 201.09. Accordingly, the undersigned must find 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 Schwarz
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 19, 2010

Date Mailed: February 22, 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:

