

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.: 2009-28346
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
August 27, 2009
Wayne County DHS (76)

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 27, 2009. Claimant appeared and testified. 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) and State Disability Assistance (SDA) programs?

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 21, 2009, claimant applied for MA-P and SDA benefits. Claimant did not request retroactive medical coverage.
- 2) On May 29, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On June 9, 2009, claimant filed a hearing request to protest the department's determination.
- 4) Claimant, age 51, has an eleventh-grade education.
- 5) Claimant has had no relevant work experience. Claimant was in prison from [REDACTED] and from [REDACTED].
- 6) Claimant has a history of a gunshot wound in [REDACTED] resulting in loss of a kidney and bullet fragment in the vicinity of the lumbar spine. Claimant reports having undergone a laminectomy at L4 in [REDACTED]. Claimant has also tested positive for hepatitis C.
- 7) Claimant is a recipient of the Adult Medical Program and has access to medical treatment and prescriptions.
- 8) Claimant currently suffers from hypertension and chronic low back pain.
- 9) Claimant has severe limitations upon his ability to walk or stand for prolonged periods of time and/or lift extremely heavy objects. Claimant's limitations have lasted twelve 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 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 claimant from doing past relevant work. 20 CFR 416.920(e). In this case, the record suggests that claimant has had no past relevant work experience as a result of his prolonged incarceration. Accordingly, claimant may not be eliminated from MA at this step in the sequential evaluation process.

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 activities. 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 was incarcerated from [REDACTED] and from [REDACTED]

██████████. Records from the Department of Corrections do not reveal any severe functional limitations. On ██████████, claimant was described as having a normal gait. His unresolved diagnoses were hypertension, essential NOS; hyperlipidemia NOS; and hepatitis C. On ██████████, claimant's unresolved diagnoses were hypertension, essential NOS; hyperlipidemia NOS; hepatitis C; and renal insufficiency. On ██████████, claimant was seen by a consulting physiatrist (specialist in physical medicine and rehabilitation) for the department. The physiatrist made the following findings:

“Gait – non-specific antalgia. Weight bearing is impaired in the left lower extremity. With a standard cane in the right hand, he leans to the right. There is no change in the patient's gait with or without the cane. The patient is not in need of the cane at this point. The patient refused heel, toe, tandem walking and squatting.”

An x-ray of the lumbar spine ordered by the consultant revealed degenerative spurring with well preserved disc space. There was no osteolytic or blastic change. A metallic foreign body secondary to old gunshot wound was noted. An impression was provided of degenerative change without evidence of fracture. The consultant provided the following impression:

1. History of multiple gunshot injuries with bullets still lodged next to the spinal cord. Now presenting with chronic low back pain of a non-radicular nature with no definite objective findings on today's examination.
2. History of injury to the left lower extremity resulting in paresthesias and weakness with no such findings detected grossly based on the limited examination done as the client was not cooperative.

On ██████████, claimant's treating physician diagnosed claimant with chronic low back pain post laminectomy of the lumbar spine and hypertension. The claimant was noted to have an antalgic gait. The physician indicated that the claimant's condition was stable and that he was capable of occasionally lifting up to ten pounds and limited to standing or walking less than two

hours in an eight-hour work day. The physician indicated that claimant had no restrictions with regard to repetitive activities of the upper and lower extremities and no mental limitations.

The treating physician's opinion with regard to limitations on walking and standing as well as lifting is not supported by acceptable medical evidence consisting of clinical signs, symptoms, laboratory or test findings, or other evaluative techniques and is not consistent with other substantial evidence in the record. The physician did not present sufficient medical evidence to support his opinion. The Department of Corrections' medical records certainly do not support the suggestion that claimant has major limitations with regard to his ability to walk, stand, and lift. The evaluation by the consulting physiatrist, likewise, does not support a finding that claimant has such major limitations. The evidence presented fails to support the position that claimant is incapable of a wide range of light work activities. After review of claimant's medical records and a report from a treating and consulting physician, claimant has failed to establish limitations which would compromise his ability to perform a wide range of light work activities. Considering that claimant, at age 51, is closely approaching advanced age, has an eleventh-grade education, has no relevant work experience, and has a work capacity for light work, this Administrative Law Judge finds that claimant's impairments do not prevent him from engaging in other work. See 20 CFR, Part 404, Subpart P, Appendix 2, Table 2, Rule 202.10. Accordingly, the undersigned must find that claimant is not presently disabled for purposes of the MA program.

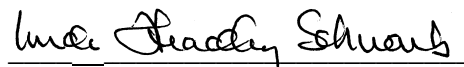
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R

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 is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM Item 261. In this case, there is insufficient medical evidence to support a finding that claimant is incapacitated or unable to work under SSI disability standards for at least 90 days. Therefore, 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 the purposes of Medical Assistance and State Disability Assistance programs. 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 23, 2010

Date Mailed: February 24, 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:

