

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.: 2009-35707

Issue No.: 2009

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

October 21, 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 October 21, 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 April 14, 2009, an application was filed on claimant's behalf for MA-P benefits. The application did not request retroactive medical coverage.

- 2) On May 4, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On July 30, 2009, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 53, is a high-school graduate with two years of college.
- 5) Claimant last worked in 2004 as a marketing manager in an advertising firm. Claimant has performed relevant work in promotions and marketing as well as retail sales (cosmetics at [REDACTED]).
- 6) Claimant's relevant work experience in promotions and marketing is transferable.
- 7) Claimant has a history of hypertension and alcohol/cocaine abuse.
- 8) Claimant was hospitalized [REDACTED] as a result of a type 1 aortic dissection. Claimant underwent emergency surgery for repair of the dissection. Her discharge diagnoses was type 1 aortic dissection status post repair; pericardial tamponade status post mediastinal exploration; anxiety; hypertension; and polysubstance abuse.
- 9) Claimant was re-hospitalized [REDACTED] following complaints of chest pain and shortness of breath. There was no evidence of an aortic hemorrhage per an aortogram done on [REDACTED]. Her dissection was found to be stable with no evidence of end-organ malperfusion. Claimant's symptoms completely resolved and she was discharged.
- 10) Claimant currently suffers from hypertension, hyperlipidemia, anxiety, history of polysubstance abuse, and history of aortic dissection and repair, now stable with no evidence of end-organ malperfusion.

- 11) Based upon claimant's complaints at the hearing of shortness of breath and fatigue with physical exertion, claimant can be said to have severe limitations upon her ability to lift extremely heavy objects. Claimant's limitations have lasted or are expected to last twelve months or more.
- 12) Claimant is capable of meeting the physical and mental demands associated with her past employment as well as other forms of light 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, 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 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, claimant suffered an aortic dissection in [REDACTED] and underwent emergency repair. She was re-hospitalized [REDACTED] with complaints of chest pain and shortness of breath. An aortogram provided no evidence of aortic hemorrhage or extravasation. At discharge, her aortic dissection was said to be stable. On [REDACTED], claimant's treating cardiologist found that claimant is capable of occasionally lifting up to ten pounds and capable of repetitive activities with the upper and lower extremities. On [REDACTED], claimant's treating cardiothoracic surgeon opined that claimant was capable of frequently lifting less than ten pounds and had no limitations with regard to repetitive activities with the upper and lower extremities. On [REDACTED], claimant's treating internist opined that claimant was capable of frequently lifting less than ten pounds and capable of repetitive activities with the upper and lower extremities. All three physicians indicated that claimant had no mental limitations. Claimant was seen by a consulting internist for the department on [REDACTED]. The consultant diagnosed claimant with a history of aortic dissection, stable at this time without complications and hypertension. The consultant provided the following medical source statement:

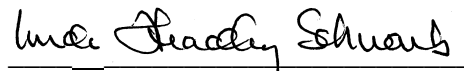
“Based on today's examination, the patient should be able to work eight hours per day. There is no limitation in walking. She can carry, push and pull. Hand grip strength is normal and equal in both hands. There is no limitation in climbing stairs, ropes, ladders or scaffolding. No limitation of hearing, vision or speech. No mental impairment noted. Based on her job promoting marketing

that she did for 12 years, there should not be any problem working in this same position.”

The consultant opined that claimant had no physical or mental limitations. Accordingly, claimant cannot be found to be disabled for purposes of the MA program. Further, the record supports a finding that claimant is, at the very least, capable of performing light work activities on a regular and continuing basis. See Appendix 1 of Subpart P of 20 CFR, Part 404, Table 2, Rule 202.15. 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 decision in this matter is hereby affirmed.



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

Date Signed: April 19, 2010

Date Mailed: April 19, 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:

