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.: 2010-15393
Issue No.: 2009, 4031
Case No.: [redacted]
Load No.: [redacted]
Hearing Date:
April 14, 2010
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 April 14, 2010. 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 September 20, 2009, claimant filed an application for MA-P and SDA benefits. Claimant did not request retroactive medical coverage.

2) On December 15, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.

3) On December 21, 2009, a hearing request was filed to protest the department's determination.

4) Claimant, age 49, is a high-school graduate with some college.

5) Claimant last worked in 2000 as a file clerk. Claimant has also performed relevant work as a mail sorter and dietary aide in a nursing home. Claimant's relevant work history consists exclusively of unskilled work activities.

6) Claimant has had no hospitalizations from the period of September of 2009 to date.

7) Claimant currently suffers from coronary artery disease with history of myocardial infarction and stent placement; hyperlipidemia; hypertension; and mild bilateral femoral-popliteal arterial disease.

8) 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.

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 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 prolonged 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 or 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 you 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. Claimant was seen by a consulting internist for the [redacted] [redacted] on [redacted]. The consultant provided the following impression:

> "Fine and gross dexterity is intact. There was no atrophy or sensory changes noted.
>
> Osteoarthritis and spinal disorder – This is minimal. Patient had full range of motion of all her joints. There was no subluxation, contracture or instability. She had good grip and pinch strength. Her straight leg raising was satisfactory.
>
> Ambulation – Patient ambulated very well without an ambulation aid. There was no muscle atrophy. She did not have difficulty squatting or heel to toe walking. Patient managed to get on and off the examination table without difficulty.
>
> Hypertensive cardiovascular disease – This seems to be well compensated at the moment. Her blood pressure was taken at three different times and it was ranging between 130/75 to 139/90. There is a history of coronary artery disease and that has been monitored. Patient does not utilize nitroglycerin and does not have chest pain… There were no symptoms at presentation. There was no hepatomegaly or jugular venous distention. There was no evidence of pulmonary edema or peripheral edema. There was no S3 noted. Patient's symptom, which we did not observe, was shortness of breath after 150-200 yards of walking.
>
> Chronic heart failure – Again, there was no hepatomegaly, pulmonary edema, peripheral edema, jugular venous distention or S3. There is no history of CVA given.
>
> General neurological evaluation showed no functional loss."

Claimant was seen by a consulting internist for the [redacted] on [redacted] [redacted]. The consultant provided the following upon physical examination:

> **GENERAL SURVEY:** The examinee is well-developed, well nourished, and in no acute distress. The patient is alert, awake, and oriented to time, place, and person.
>
> **VITAL SIGNS:** Height 5' 6". Weight: 139 pounds. Pulse: 83. Respiratory Rate: 16. BP: 140 over 82. Visual Acuity: without glasses, right eye 20/25, left eye 20/40.

HEENT: Normocephalic/atraumatic. Pupils equal round and reactive to light. Extraocular muscles intact. Sclera non-icteric. Oropharynex clear without any lesions.

NECK: Neck is supple. No JVD noted, no bruit. No thyromegaly.

RESPIRATORY: Chest clear to auscultation bilaterally. No rales, wheezing, or rhonchi. No retractions or accessory muscle usage.

CARDIOVASCULAR: Regular rate and rhythm. No rubs, murmurs or gallops.

GASTROINTESTINAL: Abdomen soft non-tender. No organomagaly. No rebound or guarding. No palpable masses.

EXTREMITIES: The patient has normal gait and stance. She does not use an ambulation aid. Her gait is normal. She could squat and recover. She could do tandem walk. The patient was able to get on and off the examination table without difficulty. Her straight leg raising from lying position was 90° and about 45° from sitting position. There was no joint deformity or enlargement. There was no peripheral edema. No venous insufficiency. The patient had good hand grip bilaterally.

NEUROLOGIC: General: The patient is alert, awake and oriented to person, place and time. Cranial nerves II-XII were intact. Sensory functions intact to sharp and dull gross testing. Motor examination reveals fair muscle tone without flaccidity, spasticity or paralysis.

The consultant found that claimant was capable of frequently lifting up to ten pounds and occasionally lifting up to twenty pounds. The physician opined that claimant was capable of sitting for five hours without interruption, standing for two hours without interruption and walking for one hour without interruption. The physician indicated that claimant was capable of frequent operation of foot controls and that her history of coronary artery disease did limit strenuous activities. Claimant underwent a lower extremity bilateral arterial Doppler on [redacted] [redacted]. The examination suggested mild bilateral femoral-popliteal arterial occlusive disease.

On [redacted], and again on [redacted] claimant's treating family physician opined that claimant was incapable of lifting any amount of weight and incapable of any standing, walking, or sitting. The physician further indicated that claimant was incapable of repetitive activities with the upper and lower extremities. The treating physician's opinion as to claimant's physical limitations is not supported by acceptable medical evidence consisting of clinical signs, symptoms, laboratory or test findings, or evaluative techniques and is not consistent with other substantial evidence in the record. Claimant's physician did not present sufficient medical evidence to support his opinion. The evidence presented fails to support the position that claimant is incapable of a wide range of sedentary work activities. See 20 CFR 416.920c(2) and .927d(3) and (4).

Claimant has had no hospitalizations during the period under consideration. After review of claimant's medical records and evaluations by consultants, 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 activities.

Considering that claimant, at age 49, is a younger individual, has a high-school education and some college, 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 engaging in other work. See 20 CFR, Part 404, Subpart P, Appendix 2, Table 1, Rule 201.18. Accordingly, the undersigned must find that claimant is not 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

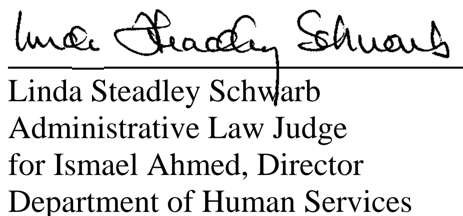
department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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 must find 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 purposes of the Medical Assistance and State Disability 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: June 10, 2010

Date Mailed: June 10, 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: