

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.: 2010-17564
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 25, 2010
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 March 25, 2010. 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) 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 October 26, 2009, an application was filed on claimant's behalf for MA-P and SDA benefits. The application did not request retroactive medical coverage.
- 2) On November 24, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On January 26, 2010, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 51, has a college degree in Accounting from [REDACTED].
- 5) Claimant last worked in October of 2009 as a home construction/improvement contractor "rehabbing" houses. Claimant has also performed relevant work as a landscape worker and accounting clerk.
- 6) Claimant has a history of alcohol abuse
- 7) Claimant was hospitalized [REDACTED]. He was diagnosed with atrial fibrillation with rapid ventricular response. He underwent a transesophageal echocardiogram and heart catheterization. Claimant was found to have severe mitral regurgitation associated with moderate pulmonary hypertension and depressed left ventricular systolic function, non-obstructive coronary artery disease. Claimant underwent mitral valve replacement. At discharge, his prognosis was said to be excellent.
- 8) Claimant has had no further hospitalizations or emergency room visits.
- 9) Claimant currently suffers from adjustment disorder with depressed mood, alcohol abuse, and history of mitral valve replacement. His GAF score on [REDACTED], was 55.

- 10) Claimant suffers from no significant physical or mental limitations with respect to his ability to perform basic work activities.
- 11) Claimant is capable of the physical and mental demands associated with 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, after careful review of the hearing record, the undersigned finds that claimant has no significant physical or mental limitations upon his ability to perform basic work activities. No significant physical limitations have been documented. A consulting psychiatric evaluation performed for the department on [REDACTED], did document some moderate limitations with regard to memory, attention, and concentration for extended periods. There is no suggestion that claimant has significant limitations with regard to basic work activities as described above. The evidence fails to support the position that claimant is incapable of basic work activities. See 20 CFR 416.927. Accordingly, the undersigned must find that the department properly determined that claimant is not entitled to MA based upon disability. But, even if claimant were found to have a severe impairment, he would still be found capable of other work.

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 capable of his past work as an accounting clerk. Once claimant recovered from his mitral valve replacement, no additional significant physical limitations have been noted. As indicated, claimant underwent a psychiatric evaluation for the department on [REDACTED]. Claimant was diagnosed with adjustment disorder with depressed mood and alcohol abuse. His GAF score was 55. There is no suggestion that claimant would not be capable of his past work as an accounting clerk. But, even if that were the case, claimant would still be 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 simple, unskilled 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 hospitalized in [REDACTED] and underwent a mitral valve replacement. At discharge, his prognosis was said to be excellent. Claimant has had no further hospitalizations or emergency room visits. Claimant was evaluated by a consulting psychiatrist for the department on [REDACTED]. The consultant diagnosed claimant with adjustment disorder with depressed mood and alcohol abuse. Claimant was given a current GAF score of 55. The consultant provided the following medical source statement:

“The claimant gets along fairly well with others. He is not aggressive. He does not have any memory problems. He is able to understand, remember and follow through with directions.”

The consultant noted that, when evaluating twenty criteria for understanding and memory, sustained concentration and persistence, social interaction, and adaption, claimant had no evidence of a limitation or was not significantly limited in sixteen of twenty categories. The consultant felt that claimant suffered from no marked limitations. At the hearing, claimant testified that he could walk for fifteen minutes and had no problems standing or sitting. He

reported that he is capable of lifting thirty to forty pounds. Claimant indicated that he performs light cleaning at his home, does his own laundry, does his own grocery shopping, and does his own food preparation. Claimant drives. Claimant reported that he performs volunteer work for several hours each week preparing food and creating food boxes. Claimant's volunteer work activities were described as light work. After review of claimant's hospital records, a report from a consulting psychiatrist, and claimant's own testimony as to his activities in the home and the community, claimant has failed to establish limitations which would compromise his ability to perform a wide range of light work activities on a regular and continuing basis. The hearing record simply fails to support the position that claimant is incapable of light work activities.

Considering that claimant, at age 51, is closely approaching advanced age, has a college 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 him from doing other work. As a guide, see 20 CFR, Part 404, Subpart P, Appendix 2, Table 2, Rule 202.13. 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).

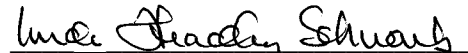
A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon

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. Accordingly, 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 purposes of the Medical Assistance and State Disability Assistance programs.

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: July 6, 2010

Date Mailed: July 9, 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.

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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:

