

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER:



Reg. No.: 2010-25191
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: June 3, 2010
Oakland County DHS (04)

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 June 3, 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 July 17, 2009, claimant filed an application for MA-P and SDA benefits. Claimant did not request retroactive medical coverage.
2. On November 17, 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 4, 2009, a hearing request was filed to protest the department's determination.
4. Claimant, age 41, has college degree in Business Administration.

5. Claimant last worked in 2007 as a pizza maker/delivery person. Claimant has also performed relevant work as a data analyst and as an administrative assistant. Claimant has a skilled work history in which the skills are transferable.
6. Claimant, at the time of the hearing, was a recipient of the Adult Medical program.
7. Claimant has had no recent hospitalizations.
8. Claimant has a history of ulcerative colitis, chronic constipation, right plantar fasciitis, and self reports a history of limited hearing from the right ear.
9. Claimant has been an active participant in [REDACTED] since at least April of 2009.
10. Claimant currently suffers from no significant physical or mental limitations with respect to his ability to perform basic work activities.
11. Claimant is capable of meeting the physical and mental demands associated with his past employment 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 (BAM), the Program Eligibility Manual (BEM) 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 failed to present the required medical data and evidence necessary to support a finding that he has significant physical or mental limitations upon his ability to perform basic work activities. Claimant has had no recent hospitalizations. He is a recipient of the Adult Medical program and, thus, has access to ongoing medical care and prescriptions. On [REDACTED], claimant’s treating internist diagnosed claimant with a history of ulcerative colitis, chronic constipation, chronic earache, and chronic foot pain. The physician indicated that claimant had a completely normal examination and that his status was stable. The treating physician indicated that claimant had no physical or mental limitations. On [REDACTED] claimant’s treating gastroenterologist diagnosed claimant with Crohn’s disease and constipation. That physician also indicated that claimant had no physical or mental limitations. On [REDACTED], claimant’s treating podiatrist indicated that claimant had been diagnosed with plantar fasciitis. The podiatrist opined that claimant had a normal examination with no physical or mental limitations. Claimant may well have an impairment. But, he has not met his burden of proof that he has an impairment that is severe or significantly limits his physical or mental ability to perform basic work activities necessary for most jobs. Evidence fails to support the position that claimant is incapable of basic work activities. See 20 CFR 416.927. Accordingly, the undersigned concludes that the department properly determined that claimant is not entitled to MA based upon disability. Even if claimant were found to have a severe impairment, he would still fail to be classified as “disabled” for purposes of MA.

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 findings, that claimant is clearly capable of his past work activities. As indicated, all of claimant’s treating physicians indicated that he had no significant physical or mental limitations. At the hearing, claimant acknowledged that his most recent outpatient colonoscopy in [REDACTED] and upper GI in early [REDACTED] were completely normal. Claimant testified that he is capable of a sit-down job. Claimant further indicated that he is capable of performing his former work as a data analyst and acknowledged that he uses a computer on a daily basis. Claimant testified that he has a garden and works at least one hour a day in his garden. The record clearly fails to support any contention that claimant is incapable of past work activities. Accordingly, claimant cannot be found to be disabled for purposes

of the MA program. As such, the department's determination in this matter must be affirmed.

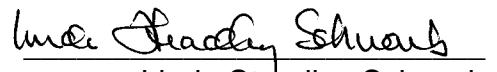
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (BAM), the Program Eligibility Manual (BEM) 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 BEM 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, this Administrative Law Judge 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: August 4, 2010

Date Mailed: August 6, 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

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