

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2010-28827  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date: April 26, 2010  
DHS County: Wayne (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 April 26, 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) 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 July 28, 2009, an application was filed on claimant's behalf for MA-P benefits. The application did not request retroactive medical coverage.
2. On December 22, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
3. On March 12, 2010, a hearing request was filed to protest the department's determination.
4. Thereafter, the Social Security Administration approved Supplemental Security Income for claimant effective March 10, 2010.

5. The department has opened MA-P for claimant effective March 1, 2010.
6. At the hearing, the parties agreed that the issue is whether or not claimant was “disabled” for purposes of the MA program from July of 2009 through February of 2010.
7. Claimant, age 44, has a seventh-grade education. Claimant reports having some difficulty with reading, writing, and mathematics.
8. Claimant last worked in 1999 as a machine operator. Claimant reports no other relevant work experience. Claimant’s relevant work history consists exclusively of unskilled work activities.
9. Claimant has a history of alcohol and marijuana abuse.
10. Claimant was hospitalized [REDACTED]. She reportedly developed tooth pain two weeks prior to admission and began taking Tylenol as well as Ibuprofen for pain control. She was treated primarily for acute liver failure secondary to misuse of over-the-counter acetaminophen. Her discharge diagnosis was pneumomediastinum, acute hepatitis, altered mental status, non ST elevation myocardial infarction, and acute renal failure. Claimant’s conditions were largely resolved at discharge.
11. At the hearing, claimant testified that, from July of 2009 through February of 2010, she experienced problems with pain and weakness of her legs and feet such that she could not stand for prolonged periods of time.
12. Claimant’s complaints and allegations concerning her impairments and limitations during the period from July of 2009 through February of 2010, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who, had the physical and mental capacity to engage in simple, unskilled 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 (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 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 claimant was working from July of 2009 through February of 2010 and if the work was substantial gainful activity. 20 CFR 416.920(b). In this case, claimant was 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 (6<sup>th</sup> 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, the only medical evidence submitted was the hospital records from claimant’s July of 2009 hospital admission. Claimant did testify that, from July of 2009 through February of 2010, she experienced problems with her feet and legs and could not stand for a prolonged period of time. Based solely upon claimant’s testimony, it is suggested that claimant did have significant physical limitations upon her ability to perform basic work activities from July of 2009 through February of 2010 such as walking or standing for prolonged periods of time. If, indeed, claimant did have such an impairment, it would have been expected to have more than a minimal effect on claimant’s ability to engage in work activities during the period in question. 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 solely upon claimant’s testimony as to her problems with prolonged standing, that claimant may well have had difficulty performing her past work as a machine operator. Although no medical evidence was offered to support that contention, for the sake of discussion, the undersigned will find that claimant, from July of 2009 through February of 2010, was not capable of performing her past relevant 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).

In this matter, the only medical evidence submitted prior to, during, or following the hearing, were records from claimant's [REDACTED] hospitalization. Claimant did testify that she had problems with her bilateral feet and legs during the period of July of 2009 through February of 2010 with regard to standing for prolonged periods of time. The hearing record is devoid of any objective medical evidence to support claimant's testimony. Nonetheless, if true, claimant would certainly have been capable of performing simple, unskilled sedentary work. Sedentary work is defined as follows:

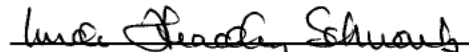
Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

After careful review of the entire hearing record, the undersigned finds that, for the period from July of 2009 through February of 2010, the record does not establish limitations which would compromise claimant's ability to perform a wide range of sedentary work activities on a regular and continuing basis. Considering that claimant, at age 44, is a younger individual, has a seventh-grade education, has an unskilled work history, and had, during the period in question, the apparent work capacity for at least sedentary work activities, the undersigned must find that claimant's impairments did not prevent her from engaging in other work during the period from July of 2009 through February 2010. See 20 CFR, Part 404, Subpart P, Appendix 2, Table 1, Rule 201.24. Accordingly, the undersigned must find that claimant was not disabled for purposes of the MA program from July of 2009 through February of 2010.

**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 was not "disabled" for purposes of the Medical Assistance program from July of 2009 through February of 2010.

Accordingly, the department's determination in this matter is hereby affirmed.

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

Date Signed: September 7, 2010

Date Mailed: September 7, 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:

