

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

IN THE MATTER:

[REDACTED]

Reg. No.: 2010-29586
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: June 24, 2010
Oakland County DHS (02)

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 24, 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 30, 2008, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to April of 2008.
2. On March 29, 2010, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
3. On March 29, 2010, a hearing request was filed to protest the department's determination.
4. Claimant, age 52, has a tenth-grade education.

5. Claimant last worked in 2004 as an adult home health care provider. Claimant has also worked in fast food preparation and as a car wash attendant.
6. Claimant has a history of crack cocaine abuse, asthma, and a C5 fracture which occurred in [REDACTED].
7. Claimant was hospitalized [REDACTED] following complaints of shortness of breath. Her discharge diagnosis was chronic obstructive pulmonary disease exacerbation secondary to upper respiratory tract infection, cocaine use, sinusitis, drug abuse of cocaine and tobacco dependency, and increased blood sugar secondary to steroids.
8. Claimant was re-hospitalized [REDACTED] as a result of shortness of breath and asthma exacerbation. Her discharge diagnosis was chronic obstructive pulmonary disease exacerbation.
9. Claimant currently suffers from bronchial asthma, polysubstance abuse, history of neck fracture, adjustment disorder with depressed moods, mood disorder NOS, and borderline personality disorder.
10. Claimant has severe limitations upon her ability to lift extremely heavy objects as well as limitations upon her ability to respond appropriately to others and deal with change. Claimant's limitations have lasted or are expected to last twelve months or more.
11. 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 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 (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 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 and mental limitations upon her ability to perform basic work activities such as lifting heavy objects and responding appropriately to supervision, co-workers, and usual work situations as well as dealing with changes in a routine work setting. 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 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 simple, unskilled light work. 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).

In this matter, claimant has a history of a C5 fracture in [REDACTED] as well as crack cocaine abuse and asthma. She was hospitalized in [REDACTED] for chronic obstructive pulmonary disease exacerbation. She was re-hospitalized in [REDACTED] for chronic obstructive pulmonary disease exacerbation. The record indicates that claimant has had no further hospitalizations. Claimant was seen by an internist for the department on [REDACTED]. The internist opined that claimant was capable of occasionally lifting up to twenty pounds as well as capable of standing or walking about six hours in an eight-hour work day and capable of sitting about six hours in an eight-hour work day. The physician indicated that claimant indicated that claimant had no apparent mental limitations. Thereafter, on [REDACTED], claimant was seen by a consulting internist for the department. The consultant provided the following diagnosis and impression:

1. Bronchial asthma. It is not very well controlled with the present regime. Clinically, there is no evidence of emphysema or cor pulmonale. Patient is not breathless on normal physical exertion.
2. Old case of fracture of the neck. Patient has no significant functional limitations orthopedically at this time.

3. Polysubstance abuse in the form of smoking crack. Her memory is good. She was in fair grooming and hygiene. She responded fairly well to the examining situation.

The consultant opined that claimant was capable of occasionally lifting up to twenty pounds as well as capable of standing and walking about six hours in an eight-hour work day and sitting about six hours in an eight-hour work day. The consultant indicated that claimant was capable of repetitive activities with the upper and lower extremities. On [REDACTED], claimant was also seen by a consulting psychologist for the department. The consultant diagnosed claimant with adjustment disorder with depressed mood; mood disorder NOS; and borderline personality disorder. Claimant was given a current GAF score of 50. The consultant provided the following medical source statement:

“Based on today’s examination, the patient is able to acquire and use information. The patient demonstrated the ability to attend to tasks presented during the examination session. The individual was able to interact appropriately with the examination and examiner during the examination. The patient appeared to be able to care for self, ask questions and follow simple directions. The patient is able to understand, retain and follow simple instructions and generally restricted to performing simple, routine, repetitive, concrete, tangible tasks. The patient would be able to manage her own funds.”

With regard to claimant’s mental residual functional capacity, when assessing understanding and memory, sustained concentration and persistence, social interaction, and adaption, out of twenty points of evaluation, the consultant indicated that claimant had no marked limitation in any category. The consultant did find claimant to be moderately limited with regard to the ability to carry out detailed instructions, the ability to maintain attention and concentration for extended periods, the ability to accept instructions and respond appropriately to criticism from supervisors, the ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes, the ability to respond appropriately to change in the work setting, the ability to be aware of normal hazards and take appropriate precautions, the ability to travel in unfamiliar places or use public transportation, and the ability to set realistic goals and make plans independently of others. In all of the other twelve points of review, the examiner found that claimant was not significantly limited.

Objective medical evidence, signs, and symptoms as well as the hearing record as a whole, support a determination that claimant is capable of performing the physical and mental activities necessary for simple, unskilled, light work activities. After careful review of the entire hearing record, the undersigned finds that the record does not establish limitations which would compromise claimant’s ability to perform a wide range

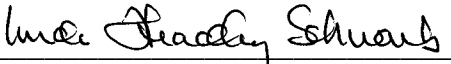
of simple, unskilled light work activities on a regular and continuing basis. The record does not support the position that claimant is incapable of light work activities.

Considering that claimant, at age 52, is closely approaching advanced age, has a tenth-grade education, has an unskilled work history, and has a sustained work capacity for light work activities, the undersigned finds that claimant's impairments do not prevent her from engaging in other work. As a guide, see 20 CFR, Part 404, Subpart P, Appendix 2, Table 2, Rule 202.10. Accordingly, the undersigned must find that claimant is not presently disabled for purposes of the MA 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 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: August 17, 2010

Date Mailed: August 18, 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:

