

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

IN THE MATTER:

[REDACTED]

Reg. No.: 2010-29747
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: May 13, 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 May 13, 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 September 11, 2009, claimant filed an application for MA-P benefits. Claimant requested MA-P retroactive to July of 2009.
2. On January 30, 2010, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
3. On April 2, 2010, a hearing request was filed to protest the department's determination.
4. Claimant, age 40, is a high-school graduate with some college.

5. Claimant last worked in September of 2007 as a truck driver. Claimant has also performed relevant work as a hi-lo/forklift operator as well as a data entry clerk. Claimant's relevant work history consists exclusively of unskilled work activities.
6. Claimant has no significant medical history.
7. Claimant was hospitalized [REDACTED] with complaints of recent onset of numbness and, to a certain degree, weakness on the right side of his body. An MRI of the brain was highly suspicious for multiple sclerosis
8. Claimant was hospitalized [REDACTED], for right lower extremity weakness which was said to have been noticed approximately four days prior to presentation in the emergency room. Wolfe-Parkinson-White pattern was seen on electrocardiogram. Claimant was evaluated for new onset right lower extremity weakness to rule out CVA/TIA.
9. Claimant has had no further hospitalizations.
10. Claimant currently suffers from multiple sclerosis.
11. Claimant has severe limitations upon his ability to walk or stand for prolonged periods of time and/or lift extremely heavy objects.
12. Claimant's complaints and allegations concerning his impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who, at the very least, has the physical and mental capacity to engage in 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 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 presented the required medical data and evidence necessary to support a finding that he has significant physical limitations upon his ability to walk or stand for prolonged periods of time and/or lift extremely 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 findings, that claimant is capable of his past work as a data entry clerk. But, even if claimant were to be found incapable of performing past work activities, the record supports a finding that he is, at the very least, capable of performing 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 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 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).

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 unskilled sedentary work activities. In this matter, the record indicates that claimant was relatively healthy until he sought emergency room treatment on [REDACTED]. Claimant complained of a four-day onset of numbness and, to a certain degree, weakness of the right side of his body. An MRI of the brain performed on [REDACTED], was highly suspicious for multiple sclerosis. Claimant was again hospitalized on [REDACTED], for new onset of right lower extremity weakness. Claimant reported that the weakness had been noticed four days prior to the emergency room treatment. Claimant underwent extensive testing and was evaluated for new onset right lower extremity weakness to rule out underlying CVA/TIA. On [REDACTED], claimant's treating internist diagnosed claimant with multiple sclerosis. The physician indicated that claimant had an essentially normal exam with the exception of positive straight leg raising of the left leg. Claimant was said to be capable of frequently lifting ten pounds and occasionally lifting up to twenty pounds. The physician found that claimant was capable of repetitive activities with the upper and lower extremities. The treating physician indicated that claimant had no mental limitations. The internist indicated that claimant was capable of sitting about six hours in an eight-hour work day and limited to standing and walking less than two hours in an eight-hour work day. The treating physician's opinion as to claimant's limitations with standing and walking 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 failed to present the position that claimant is incapable of a wide range of sedentary work activities. See 20 CFR 416.927c(2) and .927d(3) and (4). At the hearing, claimant reported that he has not

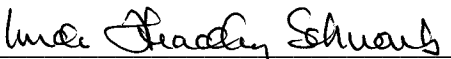
sought hospital or emergency room treatment since [REDACTED]. At the hearing, claimant testified that he is capable of sitting one to one and one-half hours at a time. He reported that he is capable of walking and standing for twenty minutes at a time. Claimant acknowledged that he is capable of lifting approximately twenty pounds. Claimant reported that he was told to avoid work with balance requirements. He indicated that he was told his recent blood work was normal. After a review of claimant's hospital records, a report from claimant's treating physician, and test results, claimant has failed to establish limitations which would compromise his 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 40, is a younger individual, has a high-school education, 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 him from doing other work. As a guide, see 20 CFR, Part 404, Subpart P, Appendix 2, Table 1, Rule 201.27. 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 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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