

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.: 2010-37073
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: July 14, 2010
DHS County: Macomb (36)

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 July 14, 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 December 10, 2009, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to November of 2009.
2. On February 4, 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 25, 2010, a hearing request was filed to protest the department's determination.
4. Claimant, age 61, has high-school education.

5. Claimant last worked in August of 2009 when he was self-employed as a computer, website, and wedding photography consultant. Claimant has had no other relevant work experience. Claimant's relevant work history consists exclusively of skilled work in which the skills are transferable.
6. Claimant has a history of a motor vehicle accident occurring in [REDACTED]. Claimant suffered a C3 fracture and underwent an anterior cervical discectomy, foraminotomy, and decompression of the nerve root.
7. Claimant was hospitalized [REDACTED] as a result of abdominal pain. He underwent a laparoscopic cholecystectomy. His discharge diagnosis was symptomatic cholelithiasis status post laproscopic cholecystectomy; gallstone pancreatitis, improved; and hypertension. Claimant has had no further hospitalizations.
8. Claimant currently suffers from reduced range of motion of the cervical spine and paresthesia of the bilateral upper extremities (worse on left).
9. Claimant has severe limitations upon his ability to lift, push, pull, or carry extremely heavy objects. Claimant's limitations have lasted twelve months or more.
10. 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 has the physical and mental capacity necessary to perform his past employment.

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 perform basic work activities such as lifting, pushing, pulling, and carrying 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 indeed capable of his past work as a computer, website, and wedding photography consultant. Claimant was in a motor vehicle accident in [REDACTED] and suffered a C3 fracture. He underwent an anterior cervical discectomy, foraminotomy, and decompression of the nerve root. He was also hospitalized in [REDACTED] for symptomatic cholelithiasis and underwent laproscopic cholecystectomy. Claimant has had no further hospitalizations. On [REDACTED], claimant’s treating physiatrist opined that claimant is capable of frequently lifting ten pounds and occasionally lifting up to twenty pounds as well as capable of standing or walking at least two hours in an eight-hour work day and sitting about six hours in an eight-hour work day. The physiatrist noted hyper reflexia, weakness, and loss of sensation to the fingertips. On [REDACTED], an MRI of claimant’s cervical spine documented no significant interval change in the appearance of the anterior cervical fusion of C3 and C4 with a stable focal myomalacia within the left hemicord at the level of C3-C4 as well as small right pericentral disc protrusion at C4-C5 and C7-T1 with high grade foraminal stenosis at C5-C6 through C7-T1, unchanged from the prior examination. On [REDACTED], claimant’s treating neurosurgeon opined that claimant was capable of occasionally lifting up to ten pounds as well as capable of simple grasping and fine manipulation with

the bilateral upper extremities. That physician limited claimant to standing and walking less than two hours in an eight-hour work day. On [REDACTED], claimant was examined by a consulting physiatrist for the department. The consultant's report indicated as follows:

FUNCTIONAL

Upper extremities – the patient is able to get dressed, button clothes, tie shoelaces, pick up a coin, pencil and write. Lower extremities – the patient is able to ambulate without a cane with a normal gait pattern. Able to heel walk, toe walk, and tandem walk. The patient can sit and stand. Able to bend, stoop. Ability to carry, push and pull is limited due to cervical fusion.

MEDICAL SOURCE STATEMENT

Based on today's examination, I feel the claimant should be able to work 4-6 hours a day sitting. There is no limitation in walking. There is limitation in carrying, pushing and pulling. Grip strength is limited. There is limitation in climbing stairs, climbing ropes, ladders or scaffolding.

IMPRESSION

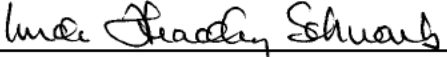
Status post motor vehicle accident with right cervical laminectomy complaining of pain in the neck and sensory deficit.

At the hearing, claimant reported that he experiences numbness in both upper arms as well as the thumb and index fingers, worse on the left. He reported that he does his own cooking, shopping, vacuuming, housework, and driving. When asked if there was anything that he could not do or needed help with, claimant responded "no." Claimant testified that he believes he is capable of his former computer work and indicated that he was currently looking for work. Claimant testified that he has no problem with sitting, can type, and has no problem using a keyboard. It is the finding of this Administrative Law Judge, based upon the medical evidence and objective physical findings, as well as claimant's own testimony as to his ability to function in his home and the community, that claimant is capable of his past work. Accordingly, claimant cannot be found 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: November 3, 2010

Date Mailed: November 4, 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:

