

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.: 2010-44596  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date: September 13, 2010  
DHS County: Oakland (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 September 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 October 7, 2009, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to August of 2009.
2. On November 5, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
3. On February 2, 2010, a hearing request was filed to protest the department's determination.
4. Claimant, age 43, has an eleventh-grade education.

5. Claimant's last relevant work was performed in 2006 installing drywall and painting. Claimant has also performed relevant work as a cook and general laborer.
6. Claimant has a history of hypertension, hypercholesterolemia, and back injury in [REDACTED].
7. Claimant was hospitalized [REDACTED] for dehydration and acute renal failure. Claimant reported that, in the three to four days prior to hospital admission, he had been involved in a job of painting indoors and outdoors and over exerted himself. Claimant was discharged on [REDACTED], with a discharge diagnosis of acute renal failure, resolved; dehydration, resolved; hypertension; hypercholesterolemia; chronic pain; and otalgia with chronic hearing loss.
8. Claimant has had no other recent hospitalizations.
9. At the time of the hearing, claimant was receiving Food Assistance Program benefits as well as the Adult Medical Program from the department.
10. Claimant currently suffers from chronic lumbar pain secondary to mild disc protrusion at L3-L4 and L5-S1 and a diffuse disc bulge at L5-L4 with mild neural foraminal narrowing; hypertension; hypercholesterolemia; and occasional otalgia with chronic hearing loss of the right ear. Claimant is able to engage in conversational speech without apparent difficulty.
11. Claimant has severe limitations upon his ability to walk or stand for prolonged periods of time and/or lift extremely heavy objects. Claimant's limitations have lasted twelve months or more.
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 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 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 (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, 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 walking and standing for prolonged periods of time and/or lifting 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 not capable of the prolonged walking and standing and/or heavy lifting required by his past employment. Claimant has presented the required medical data and evidence necessary to support a finding that he 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 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).

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).

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 light work activities. The record indicates that claimant sustained a low back injury in [REDACTED]. An MRI of the lumbar spine performed on [REDACTED] documented mild right lateral disc protrusions at L3-L4 and L5-S1 and a diffuse disc bulge at L4-L5 with associated mild neural foraminal narrowing. On [REDACTED], claimant was hospitalized for dehydration and acute renal failure. Upon admission, claimant reported that, in the previous three to four days, he had been involved in an odd job of painting indoors and outdoors for which he had exerted himself over his usual activities of daily living. Claimant was discharged the next day on [REDACTED], with a discharge diagnosis of acute renal failure, resolved; dehydration, resolved; hypertension; hypercholesterolemia; chronic pain; and otalgia with chronic hearing loss. Claimant testified at the hearing and did not demonstrate any difficulties with conversational speech.

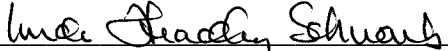
After careful review of the entire hearing record, the undersigned finds that the record does not establish limitations which would compromise claimant’s ability to perform a wide range of light work activities on a regular and continuing basis. The record does not support the position that claimant is incapable of light work activities.

Considering that claimant, at age 43, is a younger individual, has an eleventh-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 him from engaging in other work. See 20 CFR, Part 404, Subpart P, Appendix 2, Table 2, Rule 202.17. Accordingly, the undersigned must find that claimant is not presently disabled for purposes of the MA program. Even if claimant were limited to sedentary work activities, he would still be found capable of engaging in other work activities. See Med Voc Rule 201.24. Accordingly, the department's determination in this matter must be affirmed.

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

Date Signed: October 21, 2010

Date Mailed: October 21, 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:

