

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

IN THE MATTER OF:



Reg. No: 2010-9037

Issue No: 2009-4031

Case No:



Load No:

Hearing Date:

January 13, 2010

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 January 13, 2010. The Claimant appeared and testified.

ISSUE

Whether the Department properly determined the claimant is not "disabled" for purposes of the Medical Assistance (MA) and State Disability Assistance (SDA) programs?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as a material fact:

1. On July 27, 2009, the Claimant's representative applied for MA-P and SDA
2. On September 8, 2009, MRT denied the Claimant's request.
3. On October 21, 2009, the Claimant submitted to the Department a request for hearing.
4. The Claimant was 60 years old.
5. The Claimant has an 11th grade education.
6. The Claimant has employment history as a truck driver, high low driver, fence installer, factory work, and nursing aide.
7. The Claimant suffers from high blood pressure and osteoarthritis.

8. Claimant's physician indicates, based on an [REDACTED] exam, the following: condition is stable, lift frequently up to 10lbs and occasionally up to 25lbs, stand/walk less than 2 hours in an 8 hour day, sit about 6 hours in an 8 hour day and avoid use of hands/arms for pushing/pulling.
9. On [REDACTED], a consultative exam was completed; this physician indicated the following: "exam demonstrated that he has a full range of motion with no pain in all joints of both upper and lower extremities. Ambulation is entirely normal without any evidence of an antalgic gait. Therefore, it is this examiner's opinion that there are no functional restrictions or limitations for this claimant."

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 400.1 *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) 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 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 impairment(s); residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. A determination that an individual is disabled can be made at any step in the sequential evaluation. Then 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, under the first step, claimant is not working.

Second, 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 mean the abilities and aptitudes necessary to do most jobs. Examples 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. The court in *Salmi v Sec'y of Health and Human Servs*, 774 F2d 685 (6th Cir 1985) held that an impairment qualifies as “non-severe” only if it “would not affect the claimant’s ability to work,” “regardless of the claimant’s age, education, or prior work experience.” *Id.* At 691-92. Only slight abnormalities that minimally affect a claimant’s ability to work can be considered non-severe. *Higgs v Bowen*, 880 F2d 860, 862 (6th Cir. 1988); *Farris v Sec'y of Health & Human Servs*, 773 F2d 85, 90 (6thCir 1985).

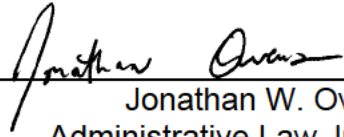
In this case, the claimant has failed to present medical evidence which would support a finding that the Claimant did in fact have a severe impairment. The Claimant was diagnosed with osteoarthritis and high blood pressure. No other diagnosed condition is listed. The Claimant’s physician indicates a great deal of restrictions on the Claimant’s abilities based upon these conditions. The restrictions imposed by this physician 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 report. Claimant’s physician did not present sufficient medical evidence to support his opinion. Therefore, this physician’s opinion cannot be given controlling weight.

The medical evidence submitted has not established an impairment (or combination of impairments) that has an effect on claimant’s work activities. Therefore, the Claimant is denied at step 2 as not having a severe impairment.

DECISION AND ORDER

This Administrative Law Judge, based on the findings of fact and conclusions of law, decides that the claimant is not “disabled”.

Accordingly, the Department's decision in this matter is AFFIRMED.


Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 10/06/10

Date Mailed: 10/06/10

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.

JWO/dj

cc:

[REDACTED]