

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No.: 2010-9495
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
January 25, 2010
Monroe County DHS

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 January 25, 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 August 14, 2009, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to May of 2009.

- 2) On October 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 October 22, 2009, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 31, has an eleventh-grade education. Claimant reports a history of special education services.
- 5) Claimant last worked in 1999 as a cashier/bottle return clerk/cart retriever at a grocery store. Claimant has also performed relevant work as a pizza maker and as a greenhouse employee. Claimant's relevant work history consists exclusively of unskilled work activities.
- 6) Claimant has a history of persistent asthma and chronic low back pain secondary to degenerative disc disease.
- 7) Claimant was hospitalized in [REDACTED] for acute gall bladder disease and urinary tract infection.
- 8) Claimant currently suffers from moderate, persistent asthma; chronic low back pain secondary to degenerative disc disease, greatest at L5-S1; left L5 radiculopathy; extreme obesity (BMI of 44.5); and depression.
- 9) Claimant has severe limitations upon her ability to walk, stand, lift, carry, handle, and reach. Claimant's limitations have lasted or are expected to last twelve months or more.
- 10) 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 is so impaired as to be incapable of engaging in any substantial gainful activity 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 (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 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 limitations upon her ability to perform basic work activities such as walking, standing, lifting, pushing, pulling, reaching, carrying, or handling. 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 walking, standing, lifting, carrying, or handling 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 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). Once claimant reaches Step 5 in the sequential review process, claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that the claimant has the residual functional capacity for substantial gainful activity.

In this matter, claimant has a history of persistent asthma and chronic low back pain secondary to degenerative disc disease. A [REDACTED] MRI of claimant’s lumbar spine revealed L4-L5 and L5-S1 disc herniations with an associated annular disc tear at L4-L5. EMG testing of the lower extremities on [REDACTED], provided evidence of mild left L5 radiculopathy characterized by reinnerbation. An MRI of the lumbar spine on [REDACTED] [REDACTED] 5, documented degenerative disc disease of the lumbar spine, greatest at L5-S1 with left L5 foraminal narrowing. Claimant was hospitalized [REDACTED], for acute gall bladder disease and urinary tract infection. On [REDACTED] claimant was seen by a consulting internist for the [REDACTED]. The consultant diagnosed claimant with obesity, which is extreme with a BMI of 49; moderate persistent asthma, currently on inhalers and home nebulizers; polycystic ovarian syndrome; and chronic low back pain with lumbar spondylosis and positive radicular symptoms. The consultant provided the following medical source statement:

“Based on today’s exam, the claimant should be able to work only a few hours, maybe 2 hours in a given 8-hour work day mostly in a seated position. There are some limitations for walking due to his [her] back pain and radicular symptoms from neuropathic pain... There are limitations for climbing ropes, ladders and scaffolding due to her extreme obesity and chronic low back pain.”

Claimant was seen by a consulting internist for the department on [REDACTED]. The consultant diagnosed claimant as follows:

1. Moderate persistent asthma currently on inhalers and nebulizers.
2. Obesity, extreme, with a BMI of 44.5.
3. Chronic persistent low back pain with disc disease at the L4-L5 and L5-S1 levels with positive radicular symptoms on the left more than the right. She had positive straight leg raising at 45° bilaterally and decreased range of motion of the cervical spine as well as decreased range of motion of the lumbar spine with pain in the hip joints.
4. Depression with suicidal thoughts.

The consultant provided the following medical source statement:

“Based on today’s examination, the claimant is probably not able to work in an 8-hour work day both seated and standing. There is limitation in her walking as well as in a seated position. The range of motion of the upper extremities are satisfactory including the ability to lift, push or carry but is not able to lift, push, pull or carry more than 10 pounds reasonably well because of the back pain. There is limitations in climbing stairs, ropes, ladders and scaffolding for similar reasons mentioned above.”

The consultant opined that claimant was limited to occasionally lifting less than ten pounds and limited to standing and walking less than two hours in an eight-hour work day and sitting less than six hours in an eight-hour work day. The consultant opined that claimant was incapable of repetitive activities with the lower extremities and incapable of reaching, pushing/pulling, or fine manipulation with the bilateral upper extremities.

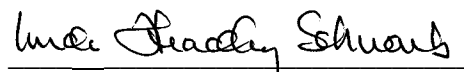
After careful review of claimant’s extensive medical record and the Administrative Law Judge’s personal interaction with claimant at the hearing, this Administrative Law Judge finds

that claimant's exertional and non-exertional impairments render claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P, Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The department has failed to provide vocational evidence which establishes that claimant has the residual functional capacity for substantial gainful activity and that, given claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which the claimant could perform despite claimant's limitations. Accordingly, this Administrative Law Judge concludes that claimant is 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 claimant meets the definition of medically disabled under the Medical Assistance program as of May of 2009.

Accordingly, the department is ordered to initiate a review of the August 14, 2009, application, if it has not already done so, to determine if all other non medical eligibility criteria are met. The department shall inform claimant and her authorized representative of its determination in writing. Assuming that claimant is otherwise eligible for program benefits, the department shall review claimant's continued eligibility for program benefits in June of 2011.


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

Date Signed: June 21, 2010

Date Mailed: June 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:

