

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.: 2010-9997
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
February 18, 2010
Wayne County DHS (35)

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 February 18, 2010. Claimant appeared and testified. Following the hearing, the record was kept open to give claimant an additional opportunity to obtain and submit medical evidence. Claimant did not submit any additional documentation.

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) 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 material fact:

- 1) On April 13, 2009, claimant filed an application for MA-P and SDA benefits. The application requested MA-P retroactive to January of 2009.
- 2) On October 1, 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 6, 2009, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 33, is a high-school graduate with three years of college.
- 5) Claimant last worked in 2003 as a bartender. Claimant has also performed relevant work as a waitress, dishwasher, bus person, and coat check person. Claimant's relevant work history consists exclusively of unskilled work activities.
- 6) Claimant has a history of Type-I Chiari malformation, kyphoscoliosis, spinal cord compression with T7 syringomyelia and cord compression. In August of 2003, claimant underwent transthoracic decompression instrumentation and fusion. In [REDACTED], claimant underwent Chiari decompression. Claimant has had no further hospitalization.
- 7) Claimant currently suffers from syringomyelia and low back pain
- 8) At the time of the hearing, claimant was a recipient of the Adult Medical Program and had access to doctor visits and prescriptions.
- 9) Claimant has severe limitations upon her ability to lift extremely heavy objects. Claimant's limitations have lasted 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 has the physical and mental capacity to engage in 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 (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 general, claimant has the responsibility to prove that she 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 she has significant physical limitations upon her ability to perform basic work activities such as lifting 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 and psychological findings, that claimant is not capable of the heavy lifting 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).

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 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).

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 light work. In this case, claimant was found in 2003 to have Type-I Giari malformation,

kyphoscoliosis, spinal cord compression with T7 syringomyelia and cord compression. Claimant underwent transthoracic decompression instrumentation and fusion in [REDACTED]. In [REDACTED], claimant underwent Chiari decompression. Claimant has had no further hospitalization. On [REDACTED], claimant's treating neurosurgeon diagnosed claimant with syringomyelia and low back pain. The physician deferred an opinion with regard to residual functional capacity until a follow up could be rescheduled. He did note that claimant had no mental limitations. Claimant was seen by a consulting internist on [REDACTED]. The consultant provided the following impression:

Fine and gross dexterity is intact. The patient is right handed. She has good handgrip bilaterally. Tinel and Phalen signs were negative. There is no atrophy or sensory changes.

Osteoarthritis and spinal disorder – the patient has some scoliosis and compression of T7 corrected, which affects standing more than 20 minutes. The claimant also claims that her walking limit is about a half a mile. However the range of motion is somewhat limited in the lumbosacral region, otherwise unremarkable. There were no sensory or motor reflex findings. There were no circulatory deficits. There was no circumferential measurement discrepancy. There was no muscle atrophy. Her gait was satisfactory.

Ambulation – the patient ambulated well without an ambulation aid. She managed to squat and recover. The patient was able to get on and off the examination table with no problem. Her straight leg raising on the right side was 30° and 60° on the left side with lying position. She managed to do tandem walk without difficulty.

The general neurological evaluation was basically non-focal.

At the hearing, claimant reported that she was a current recipient of the Adult Medical Program and had access to doctor visits and prescriptions. At claimant's request, the hearing record was extended following the hearing so that claimant would have an opportunity to obtain updated medical evidence from her primary care physician and psychiatric information. Claimant did not

submit any additional documentation. The department's worker reported that she spoke with claimant on April 1, 2010, and claimant indicated she was out of town and had no opportunity to obtain additional information from her physician. Claimant reportedly indicated that she wished to have the Administrative Law Judge make her decision based on available medical evidence in the record. The worker reported that she "insisted that she does not want any new medical evidence to be considered." After a review of the available medical record, claimant has failed to establish limitations which would compromise her ability to perform a wide range of light work activities on a regular and continuing basis. The record fails to support the position that claimant is incapable of light work activities.

Considering that claimant, at age 33, is a younger individual, has a high-school education, has an unskilled work history, and has a work capacity for light work, the undersigned finds that claimant's impairments do not prevent her from engaging in other work. See 20 CFR, Part 404, Subpart P, Appendix 2, Table 2, Rule 202.20. Accordingly, the undersigned must find that claimant is not presently disabled for purposes of the MA program. Certainly, if claimant were limited to sedentary work, she would still be found capable of other work activities. See Med Voc Rule 201.27.

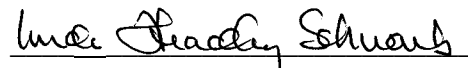
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of

SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM Item 261. In this case, there is insufficient medical evidence to support a finding that claimant is incapacitated or unable to work under SSI disability standards for at least 90 days. Therefore, the undersigned finds that claimant is not presently disabled for purposes of the SDA 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 and State Disability Assistance programs. 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: May 25, 2010

Date Mailed: May 26, 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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