

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.: 2010-7663
2010-10462
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
January 20, 2010
Macomb County DHS (12)

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 20, 2010. Claimant appeared and testified. Claimant was represented by [REDACTED]

[REDACTED].

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 March 16, 2009, an application was filed on claimant's behalf for MA-P benefits. The application did not request retroactive medical coverage.

- 2) On May 27, 2009, the department denied claimant's March 16, 2009, application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On August 24, 2009, a hearing request was filed to protest the department's determination.
- 4) On July 10, 2009, claimant filed an application for MA-P benefits. Claimant requested MA-P retroactive to June of 2009.
- 5) On September 21, 2009, the department again denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 6) On October 7, 2009, claimant filed a hearing request to protest the department's determination.
- 7) Claimant, age 41, has an Associate's Degree in Nursing and an Associate's Degree in Adult Education.
- 8) Claimant last worked in September of 2008 as a home health care provider. Claimant has had no other relevant work experience.
- 9) Claimant has a history of morbid obesity, asthma, diabetes mellitus, and polycystic ovarian disease.
- 10) Claimant currently suffers from chronic low back pain secondary to degenerative disc disease with lumbar radiculopathy, primarily affecting the L5 nerve root; degenerative disc disease of the cervical spine, right shoulder pain secondary to degenerative changes; persistent bronchial asthma; obstructive sleep apnea;

diabetes mellitus; morbid obesity; hypertension; and gastroesophageal reflux disease.

- 11) Claimant has severe limitations upon her ability to walk, stand, sit, lift, carry, and handle. Claimant's limitations have lasted twelve months or more.
- 12) 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, sitting, lifting, pushing, pulling, reaching, carrying, and 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, or carrying 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 you 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, an MRI of claimant's lumbar spine performed on [REDACTED], documented an L4-L5 posterior annular disc bulge, endplate spondylosis and facet arthropathy resulting in right greater than left foraminal narrowing and mild narrowing of the thecal sac. Disc/bone material was found to abut the descending bilateral L5 and existing right L4 nerves. At L5-S1, posterior annular disc bulging, endplate spondylosis and facet arthropathy was found. The disc bulge was eccentric to the left, resulting in left greater than right foraminal stenosis. Disc/bone material was found to abut the exiting L5 and descending left S1 nerve roots. An MRI

of claimant's right shoulder on [REDACTED], documented arthropathy of the AC joint; effacement of the underlying supraspinatus myotendinous junction as well as tendinosis of the supraspinatus and the infraspinatus tendons and surface fraying of the anterior labrum with possible tearing of the posteroinferior labrum. An MRI of the cervical spine performed on [REDACTED], documented a small to moderate right paracentral disc extrusion extending from C5-C6 level down the C6 vertebral body on the right side with right-sided cord compression and spinal stenosis; a small broad-based bulging disc at C3-C4 causing mild spinal stenosis; and a small mid-line disc protrusion at C4-C5. On [REDACTED], claimant's treating neurologist diagnosed claimant with lumbar radiculopathy primarily affecting the L5 nerve root, right greater than left; and obesity. On [REDACTED], the neurologist opined that claimant was limited to sitting less than six hours in an eight-hour work day and limited to occasionally lifting up to ten pounds. The treating neurologist indicated that claimant was incapable of operating foot or leg controls on a repetitive basis and incapable of pushing/pulling with the bilateral upper extremities. The neurologist continued her diagnosis and assessment for claimant on [REDACTED]. At that point, the treating neurologist indicated that, in addition to L5 radiculopathy, claimant suffered from obstructive sleep apnea, myalgias, and obesity. The physician continued her assessment as to claimant's physical limitations. On [REDACTED], claimant's treating internist diagnosed claimant with right shoulder pain, bilateral ankle sprain, left knee pain, lumbar pain, asthma, neuropathy, and muscle spasms. The physician opined that claimant was limited to occasionally lifting less than ten pounds and was 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 internist indicated that claimant was incapable of operating foot or leg controls on a repetitive basis and incapable of pushing/pulling with the bilateral upper extremities. On [REDACTED]

█, claimant's treating pulmonologist diagnosed claimant with asthma, which is moderate, persistent; multiple allergies; gastroesophageal reflux; obstructive sleep apnea; and morbid obesity.

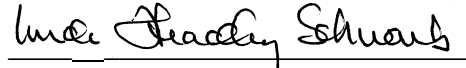
After careful review of claimant's extensive medical record and the Administrative Law Judge's personal interaction with claimant at the hearing, this Administrative Law Judge finds that claimant's exertional and non-exertional impairments render claimant unable to engage in a full range of even sedentary 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 March of 2009.

Accordingly, the department is ordered to initiate a review of the March 16, 2009, and July 10, 2009, applications, 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 Schwarb
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 24, 2010

Date Mailed: March 25, 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:

