

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.: 2010-1059
Issue No.: 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
December 10, 2009
Wayne County DHS (43)

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 December 10, 2009. Claimant appeared and testified.

ISSUE

Did the Department of Human Services (DHS or department) properly determine that claimant is not "disabled" for purposes of the State Disability Assistance (SDA) 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 July 17, 2009, claimant applied for SDA benefits based upon disability.
- 2) On August 13, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.

- 3) On August 16, 2009, claimant filed a hearing request to protest the department's determination.
- 4) Claimant, age 48, has a high-school education and some college. Claimant completed a computer applications vocational training program.
- 5) Claimant last worked in August of 2008 as computer help desk technical support person. Claimant has also performed relevant work as a computer applications instructor. Claimant's previous relevant work involved skilled work in which the skills are transferable.
- 6) On [REDACTED], claimant sustained a left tibial plateau fracture and left fibula fracture. Claimant underwent left anterior shaft intramedullary nailing and non-operative treatment of the left tibial plateau fracture.
- 7) Per an x-ray of [REDACTED], claimant's tibia and fibula fractures had healed (Department Exhibit #1, Page 11).
- 8) Claimant has limitations upon his ability to walk for prolonged periods of time and/or lift extremely heavy objects. Claimant's limitations have lasted or are expected to last twelve months or more.
- 9) Claimant is capable of meeting the physical and mental demands associated with his past employment.

CONCLUSIONS OF LAW

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 the Federal Supplemental Security Income (SSI) standards for at least 90 days. Other than the more limited 90-day duration, the department must use the same operative definition for “disabled” when considering eligibility for SDA as is used for 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 SDA at this step in the sequential evaluation process.

Secondly, in order to be considered disabled for purposes of SDA, 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 claimant has significant physical limitations upon his ability to perform basic work activities such as walking and standing for prolonged periods of time and 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 prevents him from doing his past relevant work. 20 CFR 416.920(e). In this case, claimant's past relevant work consisted of work as a computer help desk technical support person and as a computer applications instructor. Claimant acknowledged that his work skills would be described as skilled work. Claimant testified that he is still up to date with regard to computers and that his life condition does not preclude working in his relevant field. Claimant did sustain a serious left leg injury on [REDACTED], where he sustained a left tibial and left fibula fracture. Pursuant to x-rays on [REDACTED], claimant's tibia and fibula fractures had healed. (Department Exhibit #1, Page 11.) Claimant was seen by a consulting internist for the [REDACTED] on [REDACTED]. The consultant provided the following impression:

"CHRONIC LEFT LEG PAIN: The examinee has a history of chronic left leg pain and left knee pain in particular with left tibial plateau fracture. According to the record from [REDACTED], the examinee underwent left anterior shaft intramedullary and non-operative treatment of the left tibial plateau fracture. The examinee has continued and chronic pain in his left lower extremity with decreased range of motion of the left lower extremity."

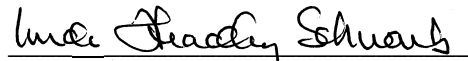
The consultant stated:

“Based upon the exam, the examinee is able to ambulate without the use of a cane or aid. He should avoid prolonged standing as well as walking and weight bearing on the left side.”

Claimant’s treating orthopedic specialist stated on [REDACTED], that claimant had no physical or mental limitations. The specialist opined that claimant was capable of frequently lifting up to ten pounds and occasionally lifting up to fifty pounds or more. The consultant opined that claimant was capable of standing or walking about six hours in an eight-hour work day and had no restrictions with regard to repetitive activities of the upper extremities. At the hearing, claimant testified that he cannot run or bend his knee. He reported that, at least once or twice a week, he takes over-the-counter Motrin for pain in his knee. Claimant acknowledged that his injury does not preclude him from engaging in his old work. Claimant testified that he wants to return to work and is currently looking for work. Claimant specifically acknowledged that he is capable of doing his former work as a computer support person. It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical findings, as well as claimant’s own testimony, that claimant is capable of his past work. Accordingly claimant cannot be found to be disabled for purposes of the SDA program. Thus, 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 State Disability Assistance program. The department’s determination is hereby affirmed.


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

Date Signed: February 19, 2010

Date Mailed: February 22, 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:

