

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.: 2010-13791
Issue No.: 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 3, 2010
Wayne County DHS (73)

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 March 3, 2010. 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 June 15, 2009, claimant filed an application for SDA benefits.
- 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 November 19, 2009, claimant filed a hearing request to protest the department's determination.
- 4) Claimant, age 37, has a high-school education.
- 5) Claimant last worked from June of 2008 through June of 2009 as a restaurant cleaning and maintenance person. Claimant quit his job upon advice of his physician because of the constant standing and walking. Claimant has also performed relevant as a "ham skinner" and factory worker. Claimant's relevant work history consists exclusively of jobs requiring the ability to walk and stand on a nearly constant basis and/or lift extremely heavy objects.
- 6) Claimant suffered multiple gunshot wounds on [REDACTED]. Claimant required open reduction and internal fixation of a left femur fracture and closed reduction of a left forearm fracture.
- 7) Claimant suffers from residual pain and a slight limp from the left lower extremity injury and uses a cane for purposes of balance and support. Claimant also suffers from a depressive disorder.
- 8) Claimant has severe limitations upon his ability to engage in prolonged walking and standing as well as limitations upon his ability to lift heavy amounts of weight. Claimant's limitations have lasted twelve months or more.
- 9) Claimant's complaints and allegations concerning his 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 sedentary work activities on a regular and continuing basis.

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 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 benefits 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(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, or heavy lifting required by his past employment. Claimant has presented the required medical data and evidence necessary to support a finding that he 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 unskilled sedentary work. Sedentary work is defined as follows:

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

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 sedentary work. Claimant did sustain multiple gunshot wounds in [REDACTED]. He underwent open reduction and internal fixation of a left femur fracture. Claimant has continued to complain of left leg pain with prolonged walking and standing. Claimant uses a cane for balance and support. Claimant was examined by a consulting psychologist for the [REDACTED] on [REDACTED]. The consultant diagnosed claimant with a depressive disorder NOS. The consultant provided the following medical source statement:

“Based on today's evaluation it is felt that the claimant's ability to understand, retain, and follow simple instruction and perform basic routine tasks is adequate. His ability to appropriately interact with co-workers, supervisors, and the public appears mildly impaired.”

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

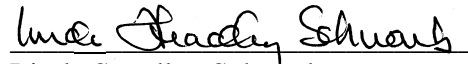
“GUNSHOT WOUND: The examinee has a history of gunshot wound to his left lower extremity which occurred in [REDACTED]. He did undergo surgical treatment and he continues to have chronic pain in his left lower extremity with a slight limp on the left side. He does use a cane for balance and support... Based on the exam, the examinee has a slight limp on the left side. There is no evidence of neurological disorganization or atrophy. He uses a cane for balance and support and might have difficulty with prolonged standing as well as heavy lifting. There is no evidence of any joint deformity or subluxation contracture instability.”

On [REDACTED], claimant’s treating physician diagnosed claimant with degenerative joint disease of the left hip and left lower extremity as well as hypertension. The physician noted that claimant walks with a limp. The physician opined that claimant was incapable of lifting any amount of weight and limited to standing and walking less than two hours in an eight-hour work day. The treating physician’s opinion 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 record. Claimant himself testified at the hearing that he is capable of standing for forty-five to sixty minutes and that he has no problem sitting. The treating physician did not present sufficient medical evidence to support his opinion as to claimant’s physical limitations. The evidence presented fails to support the position that claimant is incapable of a wide range of sedentary work activities. See 20 CFR 416.927c(2), 416.927d(3) and (4). After a review of claimant’s hospital records, reports from claimant’s treating physicians as well as consulting physicians, and claimant’s own testimony, claimant has failed to establish limitations which would compromise his ability to perform a wide range of sedentary work activities on a regular and continuing basis. The record fails to support the position that claimant is incapable of sedentary work.

Considering that claimant, at age 37, is a younger individual, has a high-school education, has an unskilled work history, and has a sustained work capacity for sedentary work, this Administrative Law Judge finds that claimant's impairments do not prevent him from doing other work. See 20 CFR, Part 404, Subpart P, Appendix 2, Table 1, Rule 201.27. Accordingly, the undersigned must find 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 State Disability Assistance program. Accordingly, the department's determination in this matter is hereby affirmed.


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

Date Signed: March 30, 2010

Date Mailed: March 31, 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

cc:

