

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.: 2010-17605
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 30, 2010
Wayne County DHS (82)

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 June 30, 2010. Claimant appeared and testified. Claimant was represented by his mother, [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 October 9, 2009, claimant applied for MA-P benefits. Claimant requested MA-P retroactive to July of 2009.

- 2) On November 20, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On January 27, 2010, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 22, has earned a GED. Claimant was unable to indicate which year of school he had last completed.
- 5) Claimant is currently working at least sixteen hours per week (eight-hour days) since March 27, 2010, assembling wheels/casters. Claimant reports that he stands constantly on the job and lifts up to fifty to sixty pounds.
- 6) Claimant has had past relevant work as a fast food employee and as an electrician's assistant. Claimant's past relevant work experience consists exclusively of unskilled work activities.
- 7) Claimant has a history of asthma, recurrent herpes simplex with herpes keratitis of both eyes, IgA deficiency, eczema, dermatitis, rhinitis, and environmental allergies.
- 8) Claimant sought emergency room treatment on [REDACTED], for left eye pain.
- 9) Claimant was hospitalized [REDACTED] for asthma exacerbation.
- 10) Claimant sought emergency room treatment on [REDACTED], for a cold, cough, and shortness of breath.
- 11) Claimant sought emergency room treatment on [REDACTED], for shortness of breath.
- 12) Claimant sought emergency room treatment on [REDACTED], for right eye pain.

- 13) Claimant received emergency room treatment on [REDACTED], for pleuritic chest pain.
- 14) Claimant was hospitalized [REDACTED]. His discharge diagnosis was enterococcal sepsis presumed bacterial endocarditis, pneumonia, asthma, membranous ventricular septal defect with left to right shunt, and positive mycoplasma serology-IgM.
- 15) Claimant was re-hospitalized [REDACTED]. His discharge diagnosis was subacute bacterial endocarditis, pneumonia, possibly infected PICC line, and asthma with exacerbation.
- 16) On [REDACTED], claimant went to an emergency room for a medication refill.
- 17) Claimant sought emergency room treatment on [REDACTED], for a cough.
- 18) Claimant has recurrent problems with asthma, environmental allergies, and IgA deficiency.
- 19) 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 past work activities as well as other forms of light work 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 he 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, at the hearing, claimant reported that he was working at least sixteen hours per week (eight-hour days) since March 27, 2010, assembling wheels/casters. Claimant indicated that he is often called in for extra days of work. Claimant reported that the job requires constant standing and that he lifts up to fifty to sixty pounds. Claimant testified that he believes he is capable of performing his current job for forty hours per week. His concern is that he might become ill. A careful review of the hearing record suggests that claimant's earnings do not currently reach the level of substantial gainful activity. See 20 CFR 416.974. Accordingly, claimant may not be eliminated from 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 claimant has significant limitations upon his ability to perform extremely strenuous physical activities. The record certainly suggests that claimant, due to his asthma and allergy problems, must limit his exposure to environmental contaminants and extremes in temperatures. 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 findings, that claimant is capable of performing his past work. Per claimant's own testimony, claimant is capable of performing his present job on a more full-time basis. But, even if claimant were incapable of past work activities, he would still be found capable of other 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 activities. 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 for a wide range of light work. Claimant does have a history of asthma, environmental allergies, and IgA deficiency.

Claimant was seen by a consulting internist for the [REDACTED] on

[REDACTED]. The consultant's physical examination of claimant's chest revealed diminished movements bilaterally at the bases as well as bilateral scattered rhonchi without crepitation of the lungs. Otherwise, claimant's examination was essentially normal. The consultant provided the following diagnoses:

1. The patient is a 21 year old white male who has been having recurrent herpes simplex since childhood along with a history of shingles that started at age 4 with recurrence of shingles for the last one year. He has been diagnosed with herpes keratitis in both eyes with a vision problem. His IgE is deficient.
2. He has had asthma since childhood and has required multiple admissions for asthma. Currently he is wheezing and has bilateral rhonchi. His wheezing is exacerbated by weather changes. He is short of breath on examination today.
3. There is a history of eczema, dermatitis and rhinitis.

As indicated, claimant is currently working. Claimant testified that he believes he could work full time. He expressed fear that he may/will have an asthma flare-up. After review of claimant's hospital records, a report from a consulting physician, and claimant's own testimony as to his activities in his home and the workplace, claimant has failed to establish limitations which would compromise his 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.

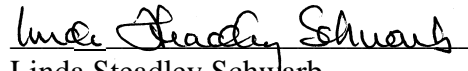
Considering that claimant, at age 22, is a younger individual, has less than a high-school diploma, has an unskilled work history, and has a work capacity for light work, the undersigned finds that claimant's impairments do not prevent him from doing other work. As a guide, see 20

CFR, Part 404, Subpart P, Appendix 2, Table 2, Rule 202.17. Certainly, claimant must avoid exposure to environmental contaminants and temperature extremes. Nonetheless, claimant is not precluded from all work activity. Accordingly, the undersigned must find that claimant is not presently 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 the Department of Human Services properly determined that claimant is not “disabled” for purposes of the Medical Assistance program.

Accordingly, the department’s decision in this matter is hereby affirmed.


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

Date Signed: July 15, 2010

Date Mailed: July 16, 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:

