

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████,

Claimant

Reg. No.: 2010-23363

Issue No.: 2009, 4031

Case No.: ██████████

Load No.: ██████████

Hearing Date:

June 10, 2010

Wayne County DHS (55)

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 10, 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 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 October 31, 2009, claimant filed an application for MA-P and SDA benefits.

Claimant did not request retroactive medical coverage.

- 2) On January 5, 2010, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On February 12, 2010, a hearing request was filed to protest the department's determination.
- 4) Claimant had a hearing in front of a Social Security Administration (SSA) Administrative Law Judge on September 17, 2009. The SSA Administrative Law Judge affirmed the denial of claimant's application for disability benefits. Claimant currently has an appeal pending at the Appeals Council.
- 5) Claimant, age 42, has a high-school education.
- 6) Claimant last worked in May of 2007 as an assembly line worker. Claimant has also performed relevant work as a warehouse worker. Claimant's relevant work history consists exclusively of unskilled work activities.
- 7) Claimant has had no in-patient hospitalizations from the time of application to the time of the hearing.
- 8) Claimant currently suffers from hypertension, obesity, mild degenerative changes of the lumbar spine (per the [REDACTED], x-ray, Department Exhibit #1, p. 23) with complaints of chronic low back pain and right leg radiculopathy, myopia, and presbyopia.
- 9) Claimant has severe limitations upon his ability to walk or stand 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.
- 10) 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, at the very least, has the physical and mental capacity to engage in unskilled sedentary 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 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, 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 he 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 prolonged walking and standing and/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, at the very least, 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. On [REDACTED] claimant's primary care physician diagnosed claimant with hypertension, chronic low back pain, and obesity. The physician noted that x-rays of the lumbar and thoracic spine documented mild degenerative changes. The treating physician opined that claimant was capable of standing or walking at least two hours in an eight-hour work day and capable of repetitive activities with the upper and lower extremities. The physician did limit claimant's ability to lift to less than five pounds. The treating physician's opinion as to claimant's lifting restriction 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's physician did not present sufficient medical evidence to support her opinion. The evidence presented failed to support the position that claimant is incapable of a full range of sedentary work. See 20 CFR 416.927c(2) and .927d(3) and (4). Claimant was seen by a consulting internist for the department on [REDACTED]

[REDACTED]. Upon examination, the consultant made the following findings:

EXTREMITIES: No obvious spinal deformity, swelling or muscle spasm noted. Pedal pulses are 2+ bilaterally. There is no calf tenderness, clubbing, edema, varicose veins, brawny erythema, stasis dermatitis, chronic leg ulcers, and muscle atrophy or joint deformity or enlargement is noted. There is minimal tenderness to palpitation in the lower lumbar area.

BONES AND JOINTS: The examinee did have a cane but did not use it on exam today. He has a slight limp on the right side. Tandem walk, heel walk and toe walk are done without difficulty. Able to squat to 40% of the distance and recover and bend to 60% of the distance and recover. Grip strength – (normal). The examinee is right handed. Gross and fine dexterity appear

bilaterally intact. Abduction of the shoulders is 0-150. Flexion of the knees is 0-150. Straight leg raising while lying 20-40 on the right and 20-50 on the left, while sitting 0-90.

The consultant provided the following impression:

1. **HYPERTENSION:** The examinee has a history of hypertension, blood pressure is under good control on exam today.
2. **ANGINA:** The examinee has a history of angina in 2007. He states he has occasional episodes of chest pain and does not use nitroglycerin for pain and discomfort and, apparently, he states an electrocardiogram was done in 2007. He states he has occasional episodes of shortness of breath.
3. **OBESITY:** The examinee has a history of obesity at 5' 9" and 210 pounds and has no weight loss efforts. He states he has shortness of breath while walking ½ a block.
4. **CARPAL TUNNEL SYNDROME:** The examinee has a history of carpal tunnel syndrome of both hands. (Range of motion – normal).
5. **CHRONIC BACK PAIN:** The examinee has a history of chronic back pain secondary to being involved in a motor vehicle accident in [REDACTED] and uses a cane for balance and support because he does have a history of falling.

Claimant was seen by a consulting ophthalmologist for the department on April 16, 2010. The consultant diagnosed claimant with myopia and presbyopia. The consultant noted as follows:

“[Claimant] would do well to obtain a pair of bifocals. Otherwise, his ophthalmologic examination is unremarkable.”

During the hearing, claimant reported that his vision was not problematic unless he wanted to read. He indicated that he does need reading glasses.

After a review of claimant's records from treating physicians, reports from consulting physicians, and test results, 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. See Social Security Ruling 83-10. The record fails to support the position that claimant is incapable of sedentary work activities.

Considering that claimant, at age 42, is a younger individual, has a high-school education, has an unskilled work history, and has a work capacity for sedentary work, this Administrative Law Judge finds that claimant's impairments do not prevent him from engaging in 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 MA program.

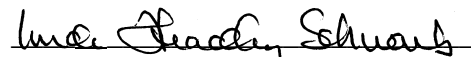
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are 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 Schwarb
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 15, 2010

Date Mailed: June 15, 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:

