

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.: 2010-25642
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
April 12, 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 April 12, 2010. Claimant appeared and testified. Claimant was represented by [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 December 17, 2009, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to September of 2009.

- 2) On January 26, 2010, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On March 4, 2010, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 52, is a high-school graduate with some college.
- 5) Claimant last worked in November of 2009 as a self-employed home improvement contractor engaging in carpentry and painting work. Claimant has also performed relevant work as an antiques dealer/appraiser/restorer and performing commercial asbestos removal. Claimant's relevant past work involved the use of skilled work activities in which the skills are not currently transferable due to physical limitations.
- 6) Claimant was hospitalized [REDACTED], as a result of a head injury. He suffered a traumatic brain injury and subarachnoid hemorrhage. He was discharged on [REDACTED].
- 7) Claimant entered the [REDACTED] on [REDACTED], for acute rehabilitation therapy. He was discharged on [REDACTED].
- 8) Claimant has had no further hospitalizations.
- 9) Claimant complains of low back pain upon bending, upper left extremity weakness, short-term memory problems, and headaches.
- 10) Claimant currently suffers from impaired use of his left upper extremity; cognitive disorder, secondary to head injury; and adjustment disorder with mixed emotional features.
- 11) Claimant's limitations can be expected to last for twelve months or more.

- 12) 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 simple, unskilled, light 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 and mental limitations upon his ability to perform basic work activities such as lifting, pushing, pulling, reaching, or handling extremely heavy objects with his left upper extremity as well as limitations with memory. 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 lifting, pushing, pulling, reaching, carrying, or handling required of his left upper extremity and use of memory as 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 simple, unskilled, light work. 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 necessary for a wide range of light work. Claimant was hospitalized in [REDACTED] as the result of a traumatic brain injury and subarachnoid hemorrhage. Following discharge, claimant was placed in the [REDACTED] from [REDACTED] for acute rehabilitation therapy. Claimant has had no further hospitalizations. Claimant was seen by a consulting internist for the department on [REDACTED]. The consulting internist found claimant's physical examination to be essentially normal. Based upon claimant's report of symptoms, the consultant provided an impression of a history of chronic brain and back injuries which occurred in [REDACTED]. The consultant speculated that claimant may have difficulty with repetitive use of his left upper extremity. Claimant was seen by a consulting psychologist for the [REDACTED] on [REDACTED]. The consultant diagnosed claimant with cognitive disorder, secondary to head injury, per patient; and adjustment disorder with mixed emotional features, secondary to assault and injury. The consultant provided the following medical source statement:

"Based on today's exam, the claimant demonstrated some cognitive strengths in terms of immediate memory, but some difficulties with short term memory. Thus, he displayed strengths in the capacity to pay attention. He also demonstrated moderate strength in concentration, as evidenced by some calculational

abilities. He displayed variable capacity for judgment, with evidence of impulsivity at times. He also displayed variable capacities for abstract thinking. He would appear capable of engaging in simple, work-type activities, remembering and executing a two or three step procedure on a sustained basis, insofar as his physical condition allows.”

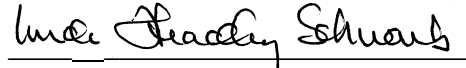
At the hearing, claimant complained of low back pain when bending as well as left upper extremity weakness, short-term memory problems, and headaches. Claimant reported that he engages in all types of housework and also assists with grocery shopping, food preparation, and laundry. Claimant testified that he is capable of work if the job does not require bending. Claimant indicated that he does run a vacuum, cook, and act as the “household manager.” After a review of claimant’s hospital records, reports from consulting specialists, and claimant’s own testimony as to his activities in the home and community, 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.

Considering that claimant, at age 52, is closely approaching advanced age, has a high-school education, has a skilled work history in which the work skills are not currently transferable, and has a sustained work capacity for light 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 2, Rule 202.13. 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 determination in this matter is hereby affirmed.


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

Date Signed: April 19, 2010

Date Mailed: April 19, 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:

