

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.: 2010-26185
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
July 6, 2010
Wayne County DHS (35)

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 July 6, 2010. Claimant appeared and testified.

ISSUE

- 1) 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?
- 2) Did the department properly determine that claimant is no longer "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) Based upon an April 22, 2009, application, the Medical Review Team (MRT) found claimant to be “disabled” for purposes of the SDA program.
- 2) During review of claimant’s ongoing eligibility for SDA, the department received an updated application from claimant dated December 19, 2009, in which claimant also applied for MA-P benefits.
- 3) On February 25, 2010, the department denied claimant’s December 19, 2009, application for MA-P benefits based upon the belief that claimant did not meet the requisite disability criteria and determined that claimant was no longer “disabled” for purposes of ongoing SDA benefits.
- 4) On March 8, 2010, a hearing request was filed by claimant to protest the closure of his SDA benefits and denial of his December 19, 2009, application for MA-P.
- 5) Thereafter, the department terminated claimant’s ongoing SDA benefits based upon claimant’s income from Unemployment Compensation.
- 6) Claimant, age 49, is a high-school graduate.
- 7) Claimant last worked in April of 2009 as a custodian/ground maintenance person. Claimant has also performed relevant work as a heavy equipment operator, hi-lo driver, and machine operator.
- 8) Claimant was in a motor vehicle accident in [REDACTED] and, as a result, underwent an anterior cervical discectomy with fusion.
- 9) Claimant currently suffers from hypertension, chronic neck pain secondary to history of anterior cervical discectomy with fusion, and mood disorder secondary to general medical condition.

- 10) Claimant is capable of meeting the physical and mental demands associated with unskilled sedentary work activities on a regular and continuing basis.
- 11) Claimant received Unemployment Compensation benefits from [REDACTED]. Claimant acknowledged that, in receiving Unemployment Compensation benefits, he certified that he was “able to, available for, and actively seeking full-time work.”

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. Accordingly, 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, standing, and/or heavy lifting required by his past relevant work. Claimant has presented the required medical evidence 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 you 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 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 was hospitalized in [REDACTED] following a motor vehicle accident. He underwent an anterior cervical discectomy with fusion. A follow-up appointment with his treating neurosurgeon indicated no new complaints and claimant denied any new numbness, weakness, or other neurological changes. X-rays demonstrated that the plate and grafts were in good sites. Claimant was seen by a consulting internist for the [REDACTED] [REDACTED] on [REDACTED]. The consultant provided the following comments:

IMPRESSION:

1. **NECK INJURY:** The examinee has a history of neck injury secondary to being involved in a motor vehicle accident. He did have cervical myelopathy and had traumatic disc herniation after the motor vehicle accident and had decompression of the anterior C6-C7 with cervical discectomy and continues to have chronic neck and shoulder pain... The examinee is wearing a soft cervical collar for ongoing pain management and limitation in range of motion.
2. **HYPERTENSION:** The examinee has a history of hypertension, currently on medication.
3. **POST TRAUMATIC STRESS DISORDER:** The examinee has a history of post traumatic stress disorder and is being followed by a mental health specialist and taking medication as needed.

MEDICAL SOURCE STATEMENT:

Based on the exam, the examinee should avoid repetitive and heavy lifting, bending, pushing and pulling and the use of his upper extremities. He does need ongoing mental health care for his post traumatic stress disorder.

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

[REDACTED]. The consultant diagnosed claimant with mood disorder secondary to general medical condition. The consultant provided the following medical source statement:

“Based on today’s examination, the patient seemed to be able to understand, retain and follow simple instructions. He would be able to perform simple, routine, repetitive tasks. Due to his depression and psychomotor retardation, he would be best able to function in a setting where there is brief interaction with co-workers, supervisors and the public.”

At the hearing, claimant testified that his treating physician gave him a limitation of no heavy lifting over forty to fifty pounds and no prolonged standing. Claimant indicated interest in obtaining sedentary work and indicated a willingness to try it. Claimant testified that he does his own laundry, grocery shopping, and food preparation. When asked if there was anything he could not do or needed help with, claimant replied “not really.”

On [REDACTED], claimant’s treating physician diagnosed claimant with post-traumatic stress disorder, status post motor vehicle accident, chronic pain, and somatoform disorder. The physician indicated that claimant would be unable to perform any kind of work until [REDACTED]. On [REDACTED], the same treating physician opined that claimant was limited to occasionally lifting less than ten pounds and limited to standing and walking less than two hours in an eight-hour work day. The physician did indicate that claimant was able to sit about six hours in an eight-hour work day. He also indicated that claimant did not require an assistive device for ambulation. The treating physician’s opinion as to claimant’s

restrictions with regard to lifting and standing/walking 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 his opinion. The evidence presented failed to support the position that claimant is incapable of a full range of sedentary work activities. See 20 CFR 416.927c(2) and .927d(3) and (4). At the hearing, claimant indicated interest in a sit-down or sedentary job. Claimant acknowledged that he had been receiving Unemployment Compensation benefits from [REDACTED]. Claimant acknowledged that, in receiving Unemployment Compensation benefits, he was certifying that he was "able to, available for, and actively seeking full-time work." After a review of claimant's hospital records, medical reports, and claimant's own testimony as to his activities in his home and the community, 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 Rulings 83-10 and 96-9p. The record fails to support the position that claimant is incapable of sedentary work.

Considering that claimant, at age 49, 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 doing other work. As a guide, see 20 CFR, Part 404, Subpart P, Appendix 2, Table 1, Rule 201.18. 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

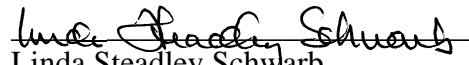
department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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 continues to be incapacitated or unable to work under SSI disability standards for at least 90 days. Accordingly, this Administrative Law Judge finds that claimant is no longer 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 program and is no longer “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: 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.

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:

