

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2010-27269  
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. Following the hearing, the record was kept open for the receipt of Claimant Exhibit A. The additional documentations was received and reviewed.

**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 December 8, 2009, claimant filed an application for MA-P and SDA benefits. Claimant did not request retroactive medical coverage.
2. On February 12, 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 11, 2010, a hearing request was filed to protest the department's determination.
4. Claimant, age 42, has an eleventh-grade education and has earned a GED.

5. Claimant last worked in December of 2008 as an adult home health care provider and as a restaurant cook/stock person. Claimant's relevant work history consists exclusively of unskilled work activities.
6. Claimant fractured her right ankle on [REDACTED].
7. On [REDACTED], claimant underwent open reduction and internal fixation of the right ankle fracture.
8. On [REDACTED], claimant underwent removal of the right ankle hardware. Claimant's fracture was well healed at the time of removal.
9. Claimant currently suffers from a healed right ankle fracture which has reduced range of motion as well as pain and swelling with prolonged ambulation.
10. Claimant has severe limitations upon her ability to walk and stand for prolonged periods of time. Claimant's limitations have lasted or are expected to last twelve months or more.
11. Claimant's complaints and allegations concerning her 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 (BAM), the Program Eligibility Manual (BEM) 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 she 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 (6<sup>th</sup> 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 she has significant physical limitations upon her ability to perform basic work activities such as walking and standing for prolonged periods of time. 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 may not be capable of the prolonged walking and standing required by her past employment as an adult home health care provider and/or restaurant cook/stock person. Claimant has presented the required medical data and evidence necessary to support a finding that she 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 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 unskilled sedentary work. In this matter, claimant fractured her right ankle on [REDACTED]. On [REDACTED], claimant underwent open reduction and internal fixation of the fracture. Thereafter, when the fracture was well healed, claimant had the hardware removed on [REDACTED]. On [REDACTED], claimant's treating family physician opined that claimant was incapable of lifting any amount of weight and incapable of any walking or standing in an eight-hour work day. The physician indicated that claimant required a cane and/or crutches for ambulation and that she was incapable of reaching or pushing/pulling with the bilateral upper extremities. The physician did find that she was capable of simple grasping and fine manipulation with the bilateral upper extremities. The treating physician indicated that claimant was incapable of operating foot or leg controls with the bilateral lower extremities. 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's treating 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 wide range of sedentary work activities. See 20 CFR 416.927c(2) and .927d(3) and (4). The treating orthopedic specialist opined on [REDACTED], that claimant had reduced range of motion of her right ankle. The specialist indicated that claimant's condition was stable and did not provide any limitations with regard to lifting and/or standing and walking. The specialist specifically indicated that claimant did not require any assistive device for ambulation.

After careful review of the entire hearing record, claimant has failed to establish limitations which would compromise her 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 activities.

Considering that claimant, at age 42, is a younger individual, has an eleventh-grade education, has an unskilled work history, and has a work capacity for sedentary work, the undersigned finds that claimant's impairments do not prevent her from engaging in other work activities. See 20 CFR, Part 404, Subpart P, Appendix 2, Table 1, Rule 201.24. Accordingly, the undersigned must find that claimant is not presently disabled for purposes of the MA program.

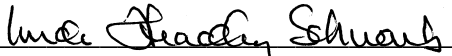
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (BAM), the Program Eligibility Manual (BEM) 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 BEM 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, this Administrative Law Judge 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: July 27, 2010

Date Mailed: July 28, 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:

