

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.: 2010-2769
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
November 25, 2009
Macomb County DHS (12)

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 November 25, 2009. 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 March 10, 2009, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to February of 2009.

- 2) On September 18, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On October 7, 2009, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 48, is a high-school graduate with two years of college.
- 5) Claimant last worked in approximately 2004 as a [REDACTED]. Claimant has also performed relevant work as an office receptionist, secretary, and administrative assistant. Claimant's relevant work history consists of semi-skilled work activities in which the skills are transferable.
- 6) Claimant was hospitalized [REDACTED] as a result of a myocardial infarction. She underwent heart catheterization and urgent surgical revascularization of the LAD and the circumflex artery. Claimant tolerated the surgery well and was discharged in good condition. Claimant has had no further hospital admissions.
- 7) Claimant is a recipient of the Adult Medical Program and has access to doctor visits and prescriptions.
- 8) Claimant suffers from chest wall (sternum) tenderness following the coronary artery bypass graft as well as depression NOS and generalized anxiety disorder.
- 9) Claimant complains of chest wall pain at the site of her surgical incision (sternum) as well as depression.
- 10) Claimant currently suffers from chest wall (sternum) tenderness, depression NOS, and generalized anxiety disorder.

- 11) Claimant has severe limitations upon her ability to lift extremely heavy objects as well as moderate limitations with regard to maintaining attention and concentration for extended periods. Claimant's limitations began following her cardiac surgery in [REDACTED].
- 12) Claimant is currently capable of the physical and mental demands associated with her past employment as an office receptionist, secretary, and administrative assistant as well as other forms of 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 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 currently 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 claimant has significant physical limitations upon her ability to perform basic work activities such as lifting 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

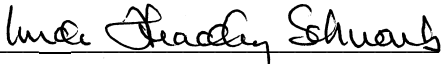
of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot 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 her from doing her past relevant work. 20 CFR 416.920(e). In this case, in [REDACTED], claimant suffered a myocardial infarction and underwent cardiac catheterization with urgent surgical revascularization. On [REDACTED], claimant's cardiologist has reported that claimant suffers from coronary artery disease, stable with no significant symptoms, chest wall tenderness at sternotomy site, hyperlipidemia, and hypertension. The physician advised weight loss and exercise. On [REDACTED], claimant's cardiologist opined that claimant suffers from coronary artery disease status post CABG, chest wall tenderness, hypertension, and hyperlipidemia. The physician noted that claimant's chest pain was "definitely due to chest wall pain." He found that claimant was not in need of an ischemic work-up. The cardiologist recommended claimant to engage in stretching exercises. On [REDACTED], claimant's cardiothoracic surgeon reported that claimant was continuing to complain of pain in her sternum. On [REDACTED], claimant's treating psychologist diagnosed claimant with depression NOS and generalized anxiety disorder. The psychologist found that claimant was experiencing moderately limited ability to maintain attention and concentration for extended periods. In all other categories of understanding and memory, sustained concentration and persistence, social interaction and adaption, the psychologist found that claimant was not significantly limited or that there was no evidence of limitation. At the hearing, claimant

testified that she drives as needed and engages in housework, laundry, shopping, and food preparation with the assistance of her developmentally disabled son. It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical findings, that claimant is capable of her past work as an office receptionist, secretary, and/or administrative assistant. Accordingly, claimant cannot be found to be disabled for purposes of the MA program. Further, the record supports a finding that claimant is, in general, capable of performing light work activities on a regular and continuing basis.

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 Schwarz
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 3, 2010

Date Mailed: February 5, 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:

