

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.: 2010-29190
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
May 3, 2010
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 May 3, 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 November 4, 2009, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to October of 2009.

- 2) On March 3, 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 25, 2010, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 55, is a high-school graduate with some college.
- 5) Claimant last worked in October of 2009 performing "side work" as a handyman engaging in household repairs, plumbing, and electrical work. Claimant has also performed relevant work as a manufacturing sales representative (telephone work, travel, and trade shows), and as a mortgage loan officer.
- 6) Claimant's work as a mortgage loan officer was sedentary work in which the work skills are transferable.
- 7) Claimant was hospitalized [REDACTED]. He was diagnosed with a benign pituitary adenoma which causes compression of the optic chiasm.
- 8) Claimant currently suffers from a benign pituitary adenoma resulting in best-corrected visual acuity of right 20/25 and left 20/200 with occasional episodes of slight vertigo, lightheadedness, and headaches.
- 9) Claimant has severe limitations upon the vision in his left eye as well as the ability to work at heights, around moving machinery, and lift extremely heavy objects. Claimant's limitations are expected to last twelve months or more.
- 10) Claimant has the ability to frequently lift up to ten pounds and occasionally lift fifty pounds or more as well as the ability to stand or work at least two hours in an eight-hour work day and engage in repetitive activities with the upper and lower

extremities. Claimant has no mental limitations. (See claimant's neurosurgeon, Department Exhibit #1, p. 10.)

- 11) Claimant is capable of meeting the physical and mental demands associated with his past work as a mortgage loan officer as well as other forms of light work 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 claimant has significant physical limitations upon his ability to perform basic work activities such as lifting extremely heavy objects and capacity for seeing with his left eye. 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.

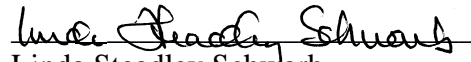
Accordingly, claimant cannot be found to be disabled based upon medical evidence alone.
20 CFR 416.920(d).

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). In this matter, claimant was hospitalized for two days in [REDACTED]. The hospitalization resulted in the diagnosis of a benign pituitary adenoma which causes compression on the optic chiasm. On [REDACTED], claimant's treating neurosurgeon indicated that the MRI of claimant's brain which was performed during the [REDACTED] hospitalization revealed a pituitary adenoma and compression of the optic chiasm. He noted that claimant suffered a blurring of the vision with regard to the left eye. The treating neurosurgeon opined that claimant was limited to frequently lifting ten pounds and occasionally lifting fifty pounds or more. The treating neurosurgeon indicated that claimant was capable of standing and walking at least two hours in an eight-hour work day and capable of repetitive activities with the upper and lower extremities. The physician indicated that claimant "does experience slight vertigo and lightheadedness." On [REDACTED], claimant was seen by a consulting ophthalmologist for the [REDACTED]. Following the examination, the consultant indicated that claimant's best-corrected visual acuity at distance was 20/25 in the right and 20/200 in the left. The physician indicated that claimant suffered decreased vision, per patient history, secondary to brain tumor between the central artery and optic nerve. On [REDACTED] [REDACTED], claimant's family physician diagnosed claimant with a pituitary microadenoma with headaches. That physician indicated that claimant was limited to occasionally lifting less than ten pounds as well as standing and walking less than two hours in an eight-hour work day and sitting about six hours in an eight-hour work day. The physician indicated that claimant was

capable of repetitive activities with the bilateral upper extremities. The family physician's opinion as to claimant's physical limitations is not supported by acceptable medical evidence consisting of clinical signs, symptoms, laboratory or test findings, or other evaluative techniques and is not consistent with other substantial evidence in the record. Claimant's family physician did not present sufficient medical evidence to support his opinion as to claimant's physical limitations. See 20 CFR 416.927c(2) and .927d(3) and (4). It is noted that claimant's treating neurosurgeon has opined that claimant is capable of occasionally lifting up to fifty pounds or more and capable of standing and walking at least two hours in an eight-hour work day with no limitations of repetitive activities with the upper or lower extremities. 20 CFR 416.927(d)(5) indicates that more weight will be given to the opinion of a specialist about medical issues related to his or her areas of specialty than to the opinion of a source who is not a specialist. Thus, it would seem that the opinion of claimant's treating neurosurgeon should be given greater weight than the opinion of claimant's treating family physician. Additionally, claimant testified that he has not been given any restrictions on driving and is driving in the community. Further, claimant testified that he does his own laundry, grocery shopping, food preparation, and housework. When asked if there was anything that claimant could not do or needed help with, claimant responded that he needed assistance with cutting the lawn and with carrying heavy objects. It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical findings, as well as claimant's own testimony as to his abilities to function in his home and the community, that claimant is capable of his past work as a mortgage loan officer. 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: May 6, 2010

Date Mailed: May 7, 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:

