

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.: 2010-29609
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
May 13, 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 May 13, 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 1, 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 January 27, 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 29, 2010, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 48, is a high-school graduate.
- 5) At the time of the hearing, claimant was working ten hours per week as a kitchen manager in a restaurant. Claimant's relevant work history consists exclusively of work as a cook and a kitchen manager.
- 6) Claimant has a history of right foot congenital talipes equine deformity as well as diabetes mellitus and hypertension.
- 7) Claimant was hospitalized [REDACTED] as a result of multiple abscesses on the anterior abdominal wall and left gluteal. His discharge diagnosis was multiple abscesses on anterior abdominal wall and left gluteal abscess, history of diabetes mellitus, and hypertension. Claimant has had no further hospitalizations.
- 8) Claimant currently suffers from hypertension and diabetes mellitus.
- 9) Claimant has severe limitations upon his ability to lift extremely heavy objects. Claimant's limitations have lasted or are expected to last twelve months or more.
- 10) Claimant is capable of the physical and mental demands associated with 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 testified at the hearing that he was working ten hours per week as a kitchen manager. The record does not support a finding that claimant's current work activities raise to the level of substantial gainful activity. See 20 CFR 416.974. 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 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 findings, that claimant is capable of his past work as a cook.

Nonetheless, even if claimant were found to be incapable of past work on a substantially full-time basis, claimant would still be found capable of performing other work activities.

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 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 has a history of a right foot congenital talipes equine deformity.

He has been diagnosed with diabetes mellitus and hypertension. Claimant was hospitalized

████████████████████ as a result of multiple abscesses on his abdominal wall and left gluteal. He underwent incision and drainage for the abscesses. No further hospitalization

was reported. Claimant was seen by a consulting internist for the [REDACTED]

[REDACTED] on [REDACTED]. The consultant provided the following diagnoses:

1. Morbid obesity with a weight of 282 pounds.
2. Diabetes Type II on insulin and oral medication.
3. Hypertension, fairly controlled. Adjustment of medication is needed.
4. Pain in the right foot. On clinical examination of the right foot, there is a vertical scar on the dorsum of the right foot, 2 inches with talipes equina deformity, which is congenital and there is mild varus deformity. There are also hammertoes from the second to fifth toe bilaterally. There is no motor weakness or sensory impairment. There is no localized tenderness, redness or swelling.
5. History of cellulitis over the lower abdominal wall, status post multiple incisions and drainage done over the lower abdomen, which is clearing up now and in the healing process. There is no active discharge or sign of infection.

The consultant provided the following medical source statement:

“Based on today’s examination, the patient should be able to work 8 hours a day. There is no limitation in walking, carrying, pushing or pulling. Hand grip strength is normal and equal in both hands. There is no limitation in climbing stairs, ropes, ladders or scaffolding. No limitation of hearing or speech. No mental impairment noted.”

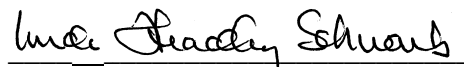
On [REDACTED], claimant’s primary care physician diagnosed claimant with diabetes and hypertension. The treating physician indicated that claimant had no physical limitations. He opined that claimant was capable of occasionally lifting twenty-five pounds and that claimant was able to stand or walk about six hours in an eight-hour work day and sit about six hours in an eight-hour work day. The physician indicated that claimant had no limitations with regard to repetitive action of the upper and lower extremities and no mental limitations. After review of claimant’s hospital records, an evaluation from claimant’s treating physician as well as an evaluation by a consulting physician, 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 activities.

Considering that claimant, at age 48, is a younger individual, has a high-school education, has a skilled work history in which the work skills may or may not be transferable, and has a sustained work capacity for light work, this Administrative Law Judge finds that claimant's impairments do not prevent him from doing other work. See 20 CFR, Part 404, Subpart P, Appendix 2, Table 2, Rule 202.21. Accordingly, the undersigned must find that claimant is not presently disabled for purposes of the MA program. Even if claimant were limited to sedentary work activities, he would still be found capable of performing other work. See Med Voc Rule 201.21. Accordingly, the department's determination in this matter must be affirmed.

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: June 1, 2010

Date Mailed: June 2, 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:

