

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.: 2010-33576
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 9, 2010
St. Clair County DHS

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 June 9, 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 February 8, 2010, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to January of 2010.

- 2) On April 9, 2010, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On April 16, 2010, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 52, is a high-school graduate.
- 5) Claimant last worked in June of 2009 as a truck driver. Claimant's employment terminated upon receipt of a ticket for impaired driving. Claimant has had no other relevant work experience.
- 6) Claimant was hospitalized [REDACTED] as a result of a cerebral vascular accident versus transient ischemic attack. His discharge diagnosis was cerebral vascular accident versus transient ischemic attack, hypertension, medication non-compliance, cerebral vascular accident with expressive dysphasia and left-sided hemiparesis, obesity, and nicotine addiction.
- 7) Claimant currently suffers from hypertension with history of cerebral vascular accident, dyslipidemia, nicotine dependence, history of alcoholism, and adjustment disorder with mixed anxiety and depressed mood.
- 8) Claimant has severe limitations upon his ability to lift extremely heavy objects. Claimant's limitations are expected to last twelve months or more.
- 9) Claimant's complaints and allegations concerning his impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who has the physical and mental capacity to engage in 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 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 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). In this case, claimant’s past relevant work has been primarily as a truck

driver. Given claimant's history with alcohol and impaired driving, his past work may not be a viable option. The record does support the position that, aside from legal constraints related to his impaired driving, claimant does have the physical and mental capacity to resume his past work as a truck driver. Certainly, claimant appears capable of performing other work activities as well.

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, who had no significant medical history, was

hospitalized [REDACTED] as a result of a cerebral vascular accident.

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

[REDACTED]. The consultant found as follows:

“There is no evidence of joint laxity, crepitation, or effusion. Grip strength remains intact. Dexterity is unimpaired. The patient could pick up a coin, button clothing, and open a door. The patient had no difficulty getting on and off the examination table, mild difficulty heel and toe walking, mild difficulty squatting, and mild difficulty hopping.”

The consultant diagnosed claimant with a cerebral vascular accident. The consultant noted as follows:

“This appears to be relatively stable. There are no focal neurological deficits today other than mild balance difficulties. His gait is stable.”

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

[REDACTED]. The consultant provided the following comments in summary:

“... clinically, he presents with mild depression and anxiety symptoms and his affect was flat. Claimant’s emotional distress appears associated with the stress of financial stressors and health issues...but speech was coherent and there were no observable problems with slurring. Claimant’s intellectual functioning is estimated to be at least average ... Descriptions of claimant’s activities suggest he is able to independently engage in a number of adaptive activities of daily living at this time. Based on the information gathered in this assessment, this individual appears able to attend, comprehend, and follow basic instructions, and he is likely able to perform a variety of activities and respond appropriately to change in a work setting.”

The consultant diagnosed claimant with adjustment disorder with mixed anxiety and depressed mood as well as nicotine dependence and history of alcohol abuse. Claimant was given a current GAF score of 64.

On [REDACTED], claimant's family practitioner diagnosed claimant with cerebral vascular accident with left hemiparesis, hypertension, anxiety, depression, and nicotine addiction. The 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 and sitting less than six hours in an eight-hour work day. The treating 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 physician did not present sufficient medical evidence to support his opinion. The evidence presented fails to support the position that claimant is incapable of a wide range of light work activities. See 20 CFR 416.927c(2) and .927d(3) and (4). At the hearing, claimant testified that he does most of the housework. When asked whether there was anything he could not do or needed help with, claimant responded "no." Claimant has a valid driver's license and does drive. He mows the lawn. At the hearing, claimant's tan suggested that he spends a good deal of time outdoors. After review of claimant's hospital records, medical reports and opinions from claimant's treating physician and consulting physicians, 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.

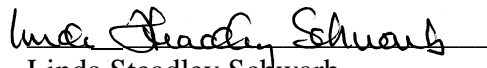
Considering that claimant, at age 52, is closely approaching advanced age, has a high-school diploma, has a work history in which his work skills (truck driver) are not currently transferable due to his history of impaired driving, and has a work capacity for light work, this Administrative Law Judge finds that claimant's impairments do not prevent him from engaging

in other work. Accordingly, the undersigned must find that claimant is not presently disabled for purposes of the MA 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 Medial 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: June 15, 2010

Date Mailed: June 15, 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:

