

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.: 2010-34406
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 14, 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 June 14, 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 January 29, 2010, an application was filed on claimant's behalf for MA-P benefits. The application did not request retroactive medical coverage.

- 2) On February 11, 2010, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On May 10, 2010, a hearing request was filed to protest the department's determination.
- 4) Claimant applied for Retirement, Survivors', and Disability Insurance (RSDI) and Supplemental Security Income (SSI) based upon disability with the Social Security Administration (SSA). Claimant's application was denied at initial determination in [REDACTED] by the SSA. Claimant did not appeal the denial.
- 5) The SSA's final determination regarding claimant's disability involved the same condition(s) as that considered by the department.
- 6) Claimant, age 52, has a tenth-grade education.
- 7) Claimant last worked on September 30, 2009, sorting vegetables on an assembly line. Claimant was laid off from his job. Claimant had no other relevant work experience.
- 8) Claimant has a history of dilated cardiomyopathy secondary to viral myocarditis and placement of automatic implantable cardioverter defibrillator in [REDACTED].
- 9) Claimant was hospitalized [REDACTED] secondary to firing of his defibrillator. His discharge diagnosis was ventricular tachycardia leading to firing of defibrillator with a secondary diagnosis of congestive heart failure secondary to dilated cardiomyopathy. Claimant was treated with medication and discharged in stable condition.
- 10) Claimant has had no further hospitalizations.
- 11) Claimant currently suffers from cardiomyopathy and congestive heart failure.

- 12) Claimant is capable of light work activities on a regular and continuing basis.
- 13) Claimant has been receiving Unemployment Compensation benefits from [REDACTED] through the date of the hearing. Claimant acknowledged that, in receiving Unemployment Compensation benefits, he certified that he was “able to, available for, and actively seeking full-time work.”

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).

Relevant departmental policy in this matter is as follows:

Final SSI Disability Determination

SSA’s determination that disability or blindness does **not** exist for SSI is **final** for MA if:

- The determination was made after 1/1/90, and
- No further appeals may be made at SSA, or
- The client has failed to file an appeal at any step within SSA’s 60 day limit, and
- The client is **not** claiming:
 - ❖ A totally different disabling condition than the condition SSA based its determination on, or
 - ❖ An additional impairment(s) or change or deterioration in his condition that SSA has not made a determination on.

Eligibility for MA based on disability or blindness does **not** exist once SSA’s determination is final. BEM Item 260, pp. 2 and 3.

In this case, claimant acknowledged at the hearing that, when evaluating claimant, the SSA and the department considered the same medical conditions. Claimant did not assert that his condition has changed or deteriorated. Claimant's application with the SSA for RSDI and SSI based upon disability was denied in [REDACTED] at the initial determination. Claimant did not appeal the denial. As such, the SSA determination is final and binding upon the department. Accordingly, the department properly determined that claimant is not disabled for purposes of MA-P benefits. But, even if there was no final SSA determination, claimant would still not be found disabled for purposes of MA-P eligibility.

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, at the time of the hearing, claimant was not working. 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 relevant work sorting vegetables. But, even if claimant were to be found incapable of his past work activities, he would still be found capable of performing other 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).

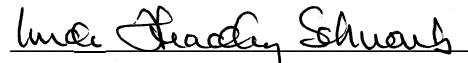
In this case, claimant has a history of dilated cardiomyopathy secondary to viral myocarditis and underwent placement of an automatic implantable cardioverter defibrillator in [REDACTED]. Claimant was hospitalized [REDACTED] when his defibrillator fired. His primary diagnosis was ventricular tachycardia leading to firing of defibrillator with a secondary diagnosis of congestive heart failure secondary to dilated cardiomyopathy. Claimant was treated with medication and discharged in stable condition. At the hearing, claimant acknowledged that he has been receiving Unemployment Compensation benefits since he lost his job in [REDACTED]. Claimant further acknowledged that, in receiving Unemployment Compensation benefits, claimant was certifying that he was "able to, available for, and actively seeking full-time work." Claimant testified that he believed he is capable of driving a hi-lo and reported that he is actively seeking full-time work as a security guard. Claimant indicated that he

was capable of light work as well as a sit-down job. After careful review of the entire hearing record, the undersigned finds that claimant is capable of past work activities as well as other forms of light work on a regular and continuing basis. 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 decision in this matter is hereby affirmed.


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

Date Signed: June 17, 2010

Date Mailed: June 18, 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.

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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:

