

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.: 2010-35243
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 24, 2010
Oakland County DHS (02)

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 24, 2010. Claimant appeared and testified without the assistance of a translator. 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 17, 2008, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to September of 2008.

- 2) On March 8, 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 26, 2010, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 61, has a high-school education from [REDACTED]. Claimant is able to speak, read, and write in English. (Department Exhibit #1, p. 16.)
- 5) At the time of the hearing, claimant was employed as a cashier in a convenience store-gas station, working twenty-five hours per week at \$7.50 per hour. Other than a three to four month break following hospitalization in [REDACTED], claimant has been continuously employed as a cashier in this position for approximately 14 years. Claimant has had no other relevant work experience.
- 6) Claimant has a history of hypertension.
- 7) Claimant was hospitalized [REDACTED] as a result of chest pain. He underwent cardiac catheterization and coronary artery bypass grafting x 3. He had a relatively unremarkable post operative course. (Department Exhibit #1, p. 25.) Claimant has had no further hospitalization.
- 8) Claimant suffers from no significant physical or mental limitations with respect to his ability to perform basic work activities.
- 9) Claimant is capable of meeting the physical and mental demands associated with his past employment as a cashier.

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, at the hearing, claimant testified that he was currently working twenty-five hours per week as a cashier at a convenience store-gas station. Claimant reported that, other than a three-month period following his [REDACTED] hospitalization, he had been so employed for the last fourteen to sixteen years. The record does not support a finding that claimant's current earnings rise to the level of substantial gainful activity. See 20 CFR 416.974. Accordingly, claimant may not be eliminated from 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).

In this case, claimant has a history of hypertension. He was hospitalized in [REDACTED] and underwent a coronary artery bypass grafting x 3. Claimant has had no further hospitalizations. Claimant was evaluated by a consulting internist for the department on [REDACTED]. Following the examination, the consultant provided the following diagnoses and impression:

1. Hypertension. It is well controlled under the present regime. Clinically, there is no evidence of cardiomegaly or cardiac failure. Fundi are normal.
2. Status post triple bypass surgery for coronary artery disease. Patient is asymptomatic. Patient had history of hyperlipidemia. He is taking medication for it.
3. Enlargement of the prostate gland. Patient refused the examination.
4. Osteoarthritis of the right knee joint. There is no functional limitation orthopedically.

At the hearing, claimant testified that the restrictions provided by his primary care provider are to watch his diet (low sodium and low fat foods) and to exercise. Claimant reported that he is following his doctor's orders. Claimant testified that he drives, performs his own housework, does his own laundry, does his own shopping, and does his own food preparation. When asked whether there was anything that he could not do or needed help doing, claimant responded "no." Claimant expressed concern about his future ability to work. After careful consideration of the entire hearing record, the undersigned finds that claimant has not met his burden of proof that he has an impairment that is severe or significantly limits his physical or mental ability to perform basic work activities necessary for most jobs. The evidence fails to support claimant's position

that he is incapable of basic work activities. See 20 CFR 416.927. But, even if claimant were found to have a severe impairment, he would still be found capable of performing work activities.

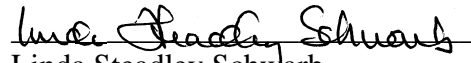
In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will 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 him from doing past relevant work. 20 CFR 416.920(e). In this case, claimant testified that he has worked for the last fourteen to sixteen years as a cashier in a convenience store-gas station. Claimant reported that he returned to work within three to four months following his heart surgery in [REDACTED]. Claimant testified that he has worked continuously to date. 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 ability to function in the home, the community, and at work, that claimant is capable of his past work activities as a cashier. Accordingly, claimant may not be found 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 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: July 1, 2010

Date Mailed: July 6, 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:

