

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER:

[REDACTED]

Reg. No.: 2010-36874
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: June 28, 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 28, 2010. Claimant appeared and testified. Claimant was represented by [REDACTED]. Following the hearing, the record was kept open for the receipt of additional medical evidence. Additional documents were received and reviewed.

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 September 8, 2009, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to August of 2009.
2. On March 5, 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 21, 2010, a hearing request was filed to protest the department's determination.
4. Claimant, age 50, has high-school education.

5. Claimant last worked in April of 2010 performing clerical work. Claimant's last relevant was performed in 2009 as a billing director. Claimant has transferable computer and clerical skills.
6. Claimant has a history of hypertension, hyperlipidemia, anxiety, obesity, and coronary artery disease with stent placement.
7. Claimant was hospitalized [REDACTED] as a result of complaints of abdominal pain. Following a rheumatology consultation, multiple tests came back negative and lupis was ruled out. Claimant's rheumatoid factor was slightly elevated at 69. Claimant underwent a colonoscopy. Biopsy came back consistent with colitis. Claimant's discharge diagnosis was colitis probably infectious; hypertension; anxiety; possible rheumatoid arthritis; and coronary artery disease. Claimant has had no further hospitalizations.
8. Claimant currently suffers from hypertension, bronchial asthma, migraine headaches, sleep disorder due to general medical condition, pain disorder associated with general medical condition, and dependent personality trait.
9. Claimant is capable of meeting the physical and mental demands associated with her past employment as well as other forms of light work on a regular and continuing basis.
10. Claimant has been receiving Unemployment Compensation benefits through the date of the hearing. In receiving Unemployment Compensation benefits, claimant certified that she 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 (BAM), the Program Eligibility Manual (BEM) 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 she 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 she has significant physical and mental limitations upon her ability to perform basic work activities such as walking and standing for prolonged periods of time and 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 and psychological findings, that claimant is capable of her past work as a clerical employee. An income search on Bridges (the department’s computer system) documents that claimant has had earned income on a sporadic basis throughout the relevant time period. (See Department Exhibit #3.) Claimant’s only in-patient hospitalization occurred in [REDACTED]. During that hospitalization, following a consultation with a rheumatologist and multiple tests, lupis was ruled out. Claimant’s rheumatoid factor was slightly elevated at 69. Claimant underwent a colonoscopy. Biopsies came back consistent with colitis. Claimant was discharged with a diagnosis of colitis, probably infectious, hypertension, anxiety, possible rheumatoid arthritis, and coronary artery disease. On [REDACTED], claimant was evaluated by a consulting internist for the department. The consultant provided the following diagnosis and impression:

1. Osteoarthritis of the lumbar spine and possibly both knee joints. There are functional limitations orthopedically as she cannot squat down more than 50% due to pain in the knee joint.

2. Alleged history of lupis erythematosus. Clinically it appears to be in remission.
3. Hypertension. It is well controlled with the present regime. Clinically there is no evidence of cardiomegaly or cardiac failure. Fundi are normal.
4. Status post coronary angiogram and insertion of 3 stents for coronary artery disease. Patient has history of chest pains suggestive of angina pectoris.
5. Bronchial asthma. It is well controlled with the present regime. Clinically there is no evidence of cor pulmonale or emphysema. Patient is not breathless on normal physical exertion.

On the same day, claimant was seen by a consulting psychiatrist for the department. The consultant diagnosed claimant with sleep disorder due to general medical condition; pain disorder associated with general medical condition and psychological factors, chronic; and dependent personality trait. The consultant made the following observations:

“Patient claimed she drove herself alone to the clinic. ... Patient walked fast with a steady gait. There was no sign of equilibrium problem. She maintained her balance during ambulation and walked steadily. There was no abnormal posture or mannerism. The patient was interactive with interview. Her hygiene and grooming appeared significantly well. She was wearing fashionable clothing and jewelry. She was well groomed and overall she appeared sophisticated lady. She appeared younger than her stated chronological age. She was punctual for her appointment. ... Patient sustained contact with reality, mediocre self esteem and motor activity. She appeared pleasant, relaxed and having good incentive, fairly motivated, autonomous with fair insight. Patient appeared to be hopeful and lively.”

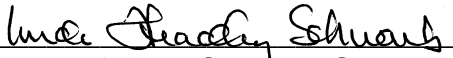
At the hearing, claimant complained of joint pain and, since a [REDACTED], motor vehicle accident, a pinched nerve in her low back. Claimant reported that she must watch what she eats in order to avoid problems with colitis. Claimant also complained of migraine headaches and blurry vision. Claimant drove herself to the hearing. Following the hearing, claimant submitted a medical examination report from her treating family physician dated [REDACTED]. The physician diagnosed claimant with lupis, colitis, migraines, radiculopathy, neuropathy, rheumatoid arthritis, and, more recently, low back pain secondary to a motor vehicle accident. The physician indicated

that claimant was capable of frequently lifting less than ten pounds and capable of repetitive activities with the upper and lower extremities. No mental limitations were noted. The physician did indicate that claimant was limited to standing and walking less than two hours in an eight-hour work day. Claimant also submitted a medical examination report from a treating internist. That physician diagnosed claimant with hypertension, migraines, right upper extremity numbness, insomnia, rheumatoid arthritis, and history of coronary artery disease. The physician noted that claimant's coronary artery disease was stable. That physician opined that claimant was capable of occasionally lifting up to ten pounds as well as capable of repetitive activities with the upper and lower extremities. The internist limited claimant to standing and walking less than two hours in an eight-hour work day. Both claimant's internist and family practitioner failed to provide acceptable medical evidence consisting of clinical signs, symptoms, laboratory or test findings, or other evaluative techniques to support their opinions as to claimant's limited ability to walk and stand. That limitation is not consistent with other substantial evidence in the record. Claimant's physicians did not present sufficient medical evidence to support their opinions as to claimant's limitations with regard to walking and standing. The evidence presented supports the position that claimant is capable of the work activities necessary for her past relevant work as a clerical employee. At the hearing, claimant acknowledged that she has been receiving Unemployment Compensation benefits. In order to receive Unemployment Compensation benefits, claimant has certified that she is "able to, available for, and actively seeking full-time work." After careful review of the entire hearing record, the undersigned finds that claimant is capable of her 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 is hereby 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 Schwarb
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 17, 2010

Date Mailed: August 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.

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

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