

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

IN THE MATTER OF THE CLAIM OF:

[REDACTED]

Reg. No.: 2010-37638
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: July 8, 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 July 8, 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 21, 2009, claimant filed an application for MA-P benefits. Claimant requested retroactive MA-P coverage through November of 2009.
2. On March 10, 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 24, 2010, a hearing request was filed to protest the department's determination.
4. Claimant, age 48, has an eleventh-grade education.
5. Claimant reported that he last worked in October of 2008 as a roofer. Claimant has also performed relevant work as an assembly line worker.

6. Claimant has a history of smoking, hypothyroidism, and a [REDACTED] decompression of the ulnar nerve right elbow. Claimant self reports a right ear hearing loss.
7. Claimant sought emergency room treatment on [REDACTED], when a pack of brake pads fell onto his knee. Hospital records refer to the trauma of the right knee as "work-related." He was treated with no apparent trauma such as fracture or sprain and discharged.
8. Claimant sought hospital treatment on [REDACTED], when a small lesion attributed to a mosquito bite apparently became infected. Claimant underwent incision, drainage, and debridement of a left forearm abscess.
9. Claimant has had no further hospitalization.
10. Claimant currently suffers from cubital tunnel syndrome of the right elbow. Claimant also self reports right ear hearing loss.
11. Claimant is capable of meeting the physical and mental demands associated with his past employment as well as other forms of work on a regular and continuing basis.
12. Claimant has received 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 (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 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 failed to present the required medical data and evidence necessary to support a finding that he has significant physical and/or mental limitations upon his ability to perform basic work activities. On [REDACTED], claimant’s treating orthopedic specialist opined that claimant had no physical limitations and no restrictions. Claimant was noted to have minimal complaints regarding his right elbow and was said to be able to fully flex and extend the elbow. The record fails to support a finding that claimant has a significant physical or mental limitation with respect to his ability to perform basic work activities. But, even if claimant were able to establish a severe limitation, he would still be found capable of 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).

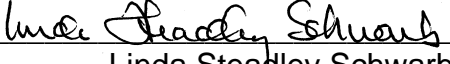
In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant’s impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). As indicated, claimant sought emergency room treatment on [REDACTED], for a right knee injury which was described as “work-related” (see Department Exhibit #1, p. 90) which occurred when a pack of brake pads fell onto his knee. Claimant was found to have no apparent trauma, such as a fracture or strain, and was discharged. Claimant returned to the hospital on [REDACTED], as a result of a small lesion attributed to a mosquito bite which was apparently infected. Hospital records indicate that claimant’s right knee had, by that time, dramatically improved with minimal swelling. Claimant was treated with incision, drainage, and debridement of a left forearm abscess. Claimant has had no further hospitalizations. As indicated, on [REDACTED], claimant’s treating orthopedic specialist diagnosed claimant with cubital tunnel syndrome of the left elbow but indicated that claimant had no physical limitations. Claimant was said to have minimal complaints regarding the right elbow and was described as being able to fully flex and extend his elbow. The treating specialist gave claimant no restrictions. The record does not support a finding that claimant had any physical or mental restrictions or impairments which would prevent him from engaging in past work. Further, claimant

acknowledged that he had been receiving Unemployment Compensation benefits. He 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 was actively seeking full-time work and believes that he is capable of working as a fast food worker. Claimant testified that he spends his time outdoors doing yard work such as mowing and has put in a vegetable garden. Claimant testified that he does housework, such as dishes, vacuuming, and laundry. 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 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 Schwarz
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 27, 2010

Date Mailed: July 28, 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:

