

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2010-38580
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: July 12, 2010
Macomb County DHS (20)

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 12, 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 November 20, 2008, claimant filed an application for MA-P benefits. Claimant requested MA-P retroactive to August of 2008.
2. On May 28, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
3. On August 25, 2009, a hearing request was filed to protest the department's determination.
4. Claimant, age 50, has a high-school education and two years of college.
5. Claimant last worked in 2008 as an accountant. Claimant has had no other relevant work experience.

6. Claimant has a history of hypertension and neurocardiogenic syncope.
7. Claimant was hospitalized [REDACTED] following a fall and fracture of her mandible. She underwent closed reduction with fixation of the mandible fracture. EEG testing was normal and an echocardiogram demonstrated an ejection fraction of 60% and no significant abnormalities.
8. Claimant has had no further hospitalizations.
9. Claimant currently suffers from hypertension which is well controlled and neurocardiogenic syncope which is stable.
10. Claimant has severe limitations upon her ability to stand or walk for prolonged periods of time. Claimant's limitations have lasted twelve months or more.
11. Claimant's complaints and allegations concerning her 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 her past work activities as an accountant 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 (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 limitations upon her ability to perform basic work activities such as walking and standing for prolonged periods of time. 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).

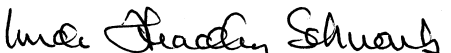
In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant’s impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge based upon the medical evidence and objective findings, that claimant is capable of her past work activities as an accountant. In this matter, claimant has a history of hypertension and cardiogenic syncope. She was hospitalized [REDACTED] following admission for fracture of the mandible after a fall secondary to a syncopal episode. Claimant underwent closed reduction with fixation of the mandible fracture. A CT of the head did not demonstrate any ischemic episodes or bleeding; EEG testing was normal; and an echocardiogram showed an ejection fraction of 60% with no significant abnormalities. Following discharge, claimant has had no further hospitalization or emergency room treatment. On [REDACTED], claimant’s treating cardiologist indicated that claimant’s neurocardiogenic syncope was well controlled. On [REDACTED], claimant’s treating cardiologist gave claimant a Class B therapeutic classification on the New York Heart Classification. [Patients with a cardiac disease whose ordinary physical activity need not be restricted, and who should be advised against severe or competitive physical efforts.] The treating cardiologist indicated that claimant was capable of occasionally lifting fifty pounds or more and had no restrictions with repetitive activities with the upper and lower extremities and no mental limitations. On [REDACTED], the treating cardiologist indicated that claimant’s neurocardiogenic status was stable and her hypertension was controlled. She was directed to follow up on a yearly basis. At the hearing, claimant acknowledged that her syncope was now “much better.” Claimant reported that she was experiencing no depression or anxiety. She indicated that she is capable of picking up her room, picking up dishes, doing light cooking, and taking of her own hygiene and dressing. Claimant reported that she drives occasionally. It is the finding of this Administrative Law Judge, based upon the medical evidence and objections, physical findings, as well as claimant’s own testimony as to her ability to function in her home and the community,

that claimant is capable of her past work as an accountant. Accordingly, claimant may not be disabled for purposes of the MA program. Further, the record supports a finding that claimant is, in general, capable of performing light work activities on a regular and continuing basis. See Appendix 1 of Subpart P of 20 CFR, Part 404, Table 2, Rule 202.15.

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: 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.

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:

