

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.: 2010-39514  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date: July 19, 2010  
Macomb County DHS (12)

**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 19, 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 24, 2009, claimant filed an application for MA-P benefits. Claimant did not request retroactive medical coverage.
2. On March 15, 2010, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
3. On June 10, 2010, a hearing request was filed to protest the department's determination.
4. Claimant, age 49, has an eleventh-grade education.
5. Claimant last worked in 2006 as a driver for his nephew. Claimant worked at least twelve hours per week, as work was available for approximately one year.

Claimant has also performed relevant work as welder, machine operator, painter, laborer, and boat repair person.

6. Claimant has a reported history of left wrist fracture and right thumb fracture in [REDACTED]. Claimant was said to have undergone surgical repair of the left wrist and right thumb in [REDACTED]. Additionally, in [REDACTED] claimant underwent aortic valve replacement.
7. Claimant is a recipient of the Adult Medical Program and, thus, has access to doctor visits and prescriptions.
8. Claimant was hospitalized [REDACTED]. His discharge diagnosis was Coumadin coagulopathy resolved; hematuria, resolved; right flank pain, resolved; acute renal failure, resolved; urinary tract infection, resolved; mechanical aortic valve on Coumadin; and history of aortic dissection.
9. At the hearing, claimant complained of low back pain, reduced range of motion and grip and grasp strength of the left wrist secondary to surgical repair in [REDACTED], reduced right thumb ability to grip and grasp secondary to surgery in [REDACTED], and shortness of breath with heavy exertion such as climbing two flights of stairs.
10. Claimant currently suffers from hematuria, minor degenerative arthritic changes of the cervical spine (per x-ray of [REDACTED]), skin lesions on the face, and history of aortic valve dissection with valve replacement, on Coumadin.
11. Claimant has severe limitations upon his ability to lift extremely heavy objects. Claimant's limitations have lasted or are expected to last twelve months or more.
12. Claimant's complaints and allegations concerning his 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 past work activities as a driver as well as light work activities 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 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 (6<sup>th</sup> 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, pushing, pulling, reaching, carrying, or handling 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 clearly capable of his past work as a driver. Claimant has failed to present the required medical data and evidence necessary to support a finding that he is not, at this point, capable of performing such work. But, even if claimant were no longer capable of past work activities, he is clearly capable of other work activities.

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 your 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).

This Administrative Law Judge finds that claimant’s residual functional capacity for work activities on a regular and continuing basis does include the ability to meet the physical and mental demands required to perform light work activities. Light work is defined as follows:

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

There is insufficient objective medical evidence, signs, and symptoms to support a determination that claimant is incapable of performing the physical and mental activities necessary for a wide range of light work activities. An x-ray of claimant’s cervical spine performed on [REDACTED], documented minor degenerative arthritic changes of the cervical spine. Claimant was hospitalized in [REDACTED]. His discharge diagnosis was Coumadin coagulopathy, resolved; hematuria, resolved; right flank pain, resolved; acute renal failure, resolved; urinary tract infection, resolved; mechanical aortic valve on Coumadin; and history of aortic dissection. On [REDACTED], claimant’s treating family physician diagnosed claimant with hematuria, neck pain, and thick sinus syndrome. The treating physician indicated that claimant was capable of frequently lifting up to ten pounds and occasionally lifting up to twenty-five pounds. The physician indicated that claimant is capable of standing or walking about six hours in an eight-hour work day and capable of sitting about six hours in an eight-hour work day. The physician found that claimant was capable of repetitive activities with the upper and lower extremities and had no mental limitations. Curiously, on [REDACTED], the same treating physician limited claimant to occasionally lifting ten pounds as well as standing or walking less than two hours in an eight-hour work day. The physician indicated that claimant was incapable of simple grasping, reaching, pushing/pulling, or fine manipulation with the bilateral upper extremities. The treating physician’s opinion on [REDACTED], as to claimant’s limitations is not supported by acceptable medical

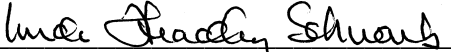
evidence consisting of clinical signs, symptoms, laboratory or test findings, or evaluate techniques and is not consistent with other substantial evidence in the record. Claimant's treating physician did not present sufficient medical evidence to support the change in his opinion. The evidence presented failed to support the position that claimant was incapable of a wide range of light work activities. Further, on [REDACTED], claimant's treating cardiologist opined that claimant was a Class I functional capacity on the New York Heart Classification. [Patients with cardiac disease but without resulting limitation of physical activity. Ordinary physical activity does not cause undue fatigue, palpitation, dyspnea or anginal pain.] The treating cardiologist gave claimant a Class A therapeutic classification on the New York Heart Classification. [Patients with cardiac disease whose ordinary physical activity need not be restricted.] Given the opinion of claimant's treating cardiologist and claimant's long work history following his [REDACTED] surgeries on his left wrist and right thumb, the record supports a finding that claimant is capable of his past work as a driver and of performing light work activities on a regular and continuing basis. At the hearing, claimant testified that his only complaints were shortness of breath which occurred after serious exertion such as climbing two flights of stairs and limitations with range of motion, grip, and grasp strength of the left wrist and reduced grip and grasp strength of the right thumb.

After careful review of the hearing record, claimant has failed to establish limitations which would compromise his ability to perform a wide range of light work activities on a regular and continuing basis. The record has failed to support the position that claimant is incapable of light work activities. Considering that claimant, at age 49, is a younger individual, has an eleventh-grade education, has an unskilled work history, and has a sustained work capacity for light work, the undersigned finds that claimant's impairments do not prevent him from engaging in other work. See 20 CFR, Part 404, Subpart P, Appendix 2, Table 2, Rule 202.17. Accordingly, the undersigned must find that claimant is not presently 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 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:

