

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.: 2010-770

Issue No.: 2009

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

November 25, 2009

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 November 25, 2009. 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 August 20, 2008, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to July of 2008.

- 2) On March 6, 2009, another application was filed for MA-P benefits retroactive to February of 2009.
- 3) On June 2, 2009, the department denied claimant's applications for MA-P benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 4) On July 31, 2009, a hearing request was filed to protest the department's determination.
- 5) Claimant, age 45, has a high-school education.
- 6) Claimant last worked in September of 2008 as a sign fabricator and installer. Claimant has also performed relevant work as a carpenter. Claimant's work skills are not transferable due to claimant's current physical limitations.
- 7) Claimant has a history of right hand and finger injury requiring surgical reconstruction.
- 8) Claimant received emergency room treatment on [REDACTED], for a contusion of the back.
- 9) Claimant was hospitalized [REDACTED] for low back pain.
- 10) Claimant was hospitalized [REDACTED] as a result of scabies and eczema.
- 11) Claimant was re-hospitalized [REDACTED] for scabies.
- 12) Claimant had emergency room treatment on [REDACTED], as a result of lumbar strain.
- 13) Claimant sought emergency room treatment on [REDACTED], for right shoulder pain.

- 14) Claimant received treatment in an emergency room on [REDACTED], as a result of a skin rash.
- 15) Claimant sought emergency room treatment on [REDACTED] as a result of right forearm pain.
- 16) Claimant was treated in an emergency room [REDACTED], for a skin rash.
- 17) Claimant was hospitalized [REDACTED] for seborrheic dermatitis and cellulitis with Staph aureus.
- 18) Claimant sought emergency room treatment on [REDACTED], as a result of a right rib fracture and lumbar contusion secondary to a fall.
- 19) Claimant was treated in an emergency room [REDACTED], for low back pain.
- 20) Claimant received treatment in an emergency room on [REDACTED], for a migraine headache.
- 21) Claimant was treated in an emergency room on [REDACTED], as a result of left arm pain.
- 22) Claimant is currently the recipient of the Adult Medical Program and has access to medical care and prescriptions.
- 23) Claimant currently suffers from low back pain secondary to disc bulges at L4-L5 and L5-S1; reduced grip, grasp, and strength of the right hand secondary to previous injury and surgical intervention; and eczema.
- 24) Claimant has severe limitations upon his ability to walk or stand for prolonged periods of time and/or lift heavy objects. Claimant's limitations have lasted or are expected to last twelve months or more.

- 25) 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 sedentary 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 (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, claimant has not been working since September of 2008. 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 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 not capable of the prolonged walking or standing and/or heavy lifting required by his past employment. Claimant has presented the required medical data and evidence necessary to support a finding that he is not, at this point, capable of performing such work.

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 sedentary work. Sedentary work is defined as follows:

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and

standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

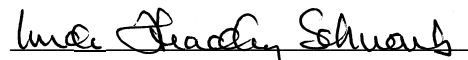
There is insufficient objective medical evidence, signs, and symptoms to support a determination that claimant is incapable of performing the physical and mental activities necessary for a wide range of sedentary work. Claimant has sought emergency room treatment on a frequent basis for complaints of eczema and low back pain, among other things. An x-ray of claimant's lumbar spine performed on [REDACTED] documented tiny spurs and was otherwise unremarkable. An MRI of the lumbar spine performed on [REDACTED], documented circumferential disc bulges at L4-L5 and L5-S1. On July 21, 2009, claimant's treating physician opined that claimant is capable of occasionally lifting up to twenty pounds and does not require an assistive device for ambulation. The physician indicated that claimant was capable of repetitive reaching with the bilateral upper extremities and capable of repetitive simple grasping, pushing/pulling, and fine manipulation with the upper left extremity. The physician indicated that claimant was capable of operating foot or leg controls on a repetitive basis with the bilateral lower extremities and had no mental limitation. Claimant testified at the hearing that his pain medication reduces his low back pain to a tolerable level. After review of claimant's hospital records, the opinion from claimant's treating physician, and test results, claimant has failed to establish limitations which would compromise his ability to perform a wide range of sedentary work activities on a regular and continuing basis. See Social Security Rulings 83-10 and 96-9p. The hearing record fails to support the position that claimant is incapable of sedentary work activities.

Considering that claimant, at age 45, is a younger individual, has a high-school education, had a semi-skilled work history in which the skills are not transferable, and has a sustained work capacity for sedentary work, this Administrative Law Judge finds that claimant's

impairments do not prevent him from engaging in other work. See 20 CFR, Part 404, Subpart P, Appendix 2, Table 1, Rule 201.19. 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 Schwarz  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: February 3, 2010

Date Mailed: February 5, 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.

2010-770/LSS

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:

