

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.: 2010-8885
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
January 14, 2010
Wayne County DHS (57)

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 January 14, 2010. Claimant appeared and testified. 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) and State Disability Assistance (SDA) programs?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- 1) Effective January of 2009, the department opened MA-P for claimant in error. The Medical Review Team had not considered or approved claimant's disability.
- 2) On May 1, 2009, claimant filed an application for SDA benefits.
- 3) On September 25, 2009, the department denied claimant's eligibility for MA-P and SDA benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 4) On October 12, 2009, a hearing request was filed to protest the department's determination.
- 5) Claimant, age 54, has a high-school education and two years of college.
- 6) Claimant last worked in 2003 performing light industrial work. Claimant has also performed relevant work as a debt collector (telephone work), and setting up/maintenance of steel fabricating presses.
- 7) Claimant currently suffers from hyperlipidemia, hypertension, diabetes mellitus, decreased vision in the left eye, and status post cerebral vascular accident.
- 8) Claimant has severe limitations upon his ability to lift extremely heavy objects and limitations upon vision with his left eye. Claimant's limitations have lasted twelve months or more.
- 9) Claimant is capable of meeting the physical and mental demands associated with his past employment as a debt collector as well as other forms of light work 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 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 he has significant physical limitations upon his ability to perform basic work activities such as lifting heavy objects and capacities for seeing with his left eye. 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). In this case, claimant reportedly has a history of cerebral vascular accident. Claimant was seen by a consulting internist for the Disability Determination Service on February 26, 2009. The consultant diagnosed claimant with hypertension, under good control; stroke;

diabetes; and history of gunshot wound to the right leg. The consultant provided the following medical source statement:

“Based upon the exam, the examinee is able to occasionally lift and carry 10-15 pounds. The examinee is able to stand and walk about 2-4 hours in an 8-hour day. The examinee is able to sit about 6 hours in an 8-hour day. The examinee is able to do simple grasping, reaching, pushing, pulling and fine manipulation. The examinee is able to operate foot and leg controls on the left side only.”

On [REDACTED], claimant’s primary care physician diagnosed claimant with diabetes, hypertension, hyperglycemia, and diabetic retinopathy. The physician indicated that claimant had a completely normal examination. The physician indicated that claimant was capable of repetitive activities with the upper and lower extremities and had no mental limitations. The physician did indicate that claimant was incapable of lifting any amount of weight and incapable of standing or walking. The physician’s opinion with regard to claimant’s limitations upon lifting and standing and walking is entirely unsupported. The physical limitations are not supported by medical evidence consisting of clinical signs, symptoms, laboratory or test findings, or evaluative techniques. It is not consistent with other substantial evidence in the record. Claimant’s physician did not present sufficient medical evidence to support his opinion. See 20 CFR 416.927c(2) and .927d(3) and (4). On [REDACTED], claimant’s family practice physician diagnosed claimant with hypertension, diabetes, and hyperlipidemia. The physician indicated that claimant has an essentially normal examination other than subjective complaints. The physician noted that all objective testing had been normal. The physician reported that, based upon claimant’s self reporting, claimant was capable of occasionally lifting ten pounds as well as capable of reaching, pushing/pulling, and fine manipulation with the bilateral upper extremities and, per claimant, difficulty operating foot or leg controls. On [REDACTED],

claimant's optometrist diagnosed claimant with myopia astigmatism, prebyopia, and amblyopia. The optometrist indicated that there was no apparent pathology with either eye and, with best correction, claimant was able to see 20/40 with his right eye and 20/80 with his left eye. At the hearing, when asked whether there was anything that claimant could not do or needed help with, claimant responded "no." Claimant testified that he was still driving and, in fact, drove himself to the hearing. Claimant opined that he was capable of sitting for one hour before he needed to get up and stretch, walk for fifteen minutes, and stand for fifteen to twenty minutes. Claimant indicated that he is capable of lifting ten to fifteen pounds. It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical findings, as well as claimant's own testimony as to his ability to function in his home and the community, that claimant is capable of his past work in collections. As claimant described it, his collection work consisted of telephone calls. Accordingly, claimant cannot be found to 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. Accordingly, the department's determination in this matter must be affirmed.

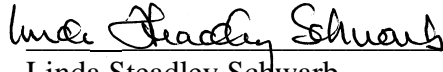
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon

disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM Item 261. In this case, there is insufficient objective medical evidence to support a finding that claimant is incapacitated or unable to work under SSI disability standards for at least 90 days. Accordingly, the undersigned finds that claimant is not presently disabled for purposes of the SDA 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 and State Disability Assistance programs. 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: May 11, 2010

Date Mailed: May 11, 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:

