

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.: 2010-9279
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
February 16, 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 February 16, 2010. Claimant appeared and testified.

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) On May 18, 2009, claimant filed an application for MA-P and SDA benefits.

Claimant did not request retroactive medical coverage.

- 2) On October 15, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On November 3, 2009, claimant filed a hearing request to protest the department's determination.
- 4) Claimant, age 36, has a high-school education.
- 5) Claimant last worked on July 25, 2005, as service equipment manager. Claimant has also performed relevant work as a construction laborer and as a freight elevator operator.
- 6) Claimant sustained a gunshot wound to the left shoulder while at work on [REDACTED]. He suffered severe damage to the left brachial plexus. Thereafter, he was involved in a motor vehicle accident in [REDACTED].
- 7) Claimant has had no recent hospitalizations or emergency room visits.
- 8) Claimant currently suffers from brachial plexopathy of the left upper extremity with reduced range of motion, post-traumatic stress disorder, dysthymic disorder, and cannabis abuse.
- 9) Claimant has severe, and likely permanent, impairments of the left (non-dominant) upper extremity.
- 10) Claimant is capable of meeting the physical and mental demands associated with one-armed 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 claimant has significant physical limitations upon his ability to perform basic work activities such as lifting, pushing, pulling, reaching, carrying, or handling with his left upper extremity. 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 lifting, pushing, pulling, reaching, carrying, or handling with his left upper extremity as was required in his past work. 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 you 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 one-armed 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 one-armed light work activities. Claimant sustained a gunshot wound to the left shoulder on [REDACTED]. EMG nerve conduction studies performed on [REDACTED], provided electrodiagnostic evidence of severe left axillary mononeuropathy with ongoing denervation in the deltoid muscle. The evaluator provided an impression of chronic denervation consistent with

left upper trunk plexopathy. On [REDACTED], a consulting physiatrist (specialist in physical medicine and rehabilitation) opined that claimant had:

“... lost the industrial use of his left upper extremity. There is no job that he can perform using his left upper extremity whatsoever. He can only do a one handed job using his right hand.”

On [REDACTED], a pain management specialist diagnosed claimant as follows:

1. History of status post gunshot wound chest and left shoulder area.
2. History of brachial plexopathy.
3. No signs or symptoms consistent with complex regional pain syndrome left upper extremity.
4. High degree of non compliance with medical treatment protocol.
5. History of cannabis abuse, regular and ongoing.

The consulting specialist further stated as follows:

“... he does have a disability and is having difficulty with use of his left upper extremity, but this is a result of the brachial plexopathy ... At this point in time, I feel he should be able to return to work in any occupation in which he is not using his left upper extremity. He would be able to work full duty with the right upper extremity as well as the rest of his body.”

On [REDACTED], claimant was seen by a consulting psychiatrist for the [REDACTED]. The consultant diagnosed claimant with dysthymic disorder, alcohol and cannabis abuse, and rule out post-traumatic stress disorder. On [REDACTED], claimant was also evaluated by a consulting internist for the [REDACTED]. The consultant diagnosed claimant with status post gunshot wound, with severe damage to the left brachial plexus, post-traumatic stress disorder, reactive depression, anxiety, and panic attacks. The consultant wrote that, in claimant’s case, “an occupational expert would have a problem with finding some type of work in which he needs only to use his right upper limb because his left upper limb is practically useless.” On [REDACTED], claimant’s treating physician diagnosed

claimant with a brachial plexus injury. The physician indicated that claimant had no limitations with regard to repetitive activities of the bilateral lower extremities and the upper right extremity. On [REDACTED] claimant's treating psychiatrist diagnosed claimant with post-traumatic stress disorder and cannabis abuse.

After review of claimant's medical records, reports from treating and consulting physicians, and the hearing record, claimant has failed to establish limitations which would compromise his ability to perform one-handed light work activities on a regular and continuing basis. See Social Security Ruling 87-11c. The loss, or loss of use, of a hand or arm is not disabling *per se*. Federal law has held that an individual who has lost or has lost the use of an arm or hand can still engage in substantial gainful activity. See *Knott v Calisano*, 559 F2d 279 (6th Cir, 1977). Claimant undisputedly has the full use of his right dominant hand and arm. Substantial evidence in the whole record supports the position that, even though limited to the use of his right hand and arm, claimant can perform a substantial number of jobs in the national economy.

Considering that claimant, at age 36, is a younger individual, has a high-school education, and a work history in which any work skills are no longer transferable due to current limitations, and has a maximum sustained work capacity for one-armed light work activities, this Administrative Law Judge finds that the claimant's impairments do not prevent him from doing other work. See 20 CFR, Part 404, Subpart P, Appendix 2, Table 2, Rule 202.20. Accordingly, the undersigned finds that claimant is not presently disabled for purposes of the MA program.

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

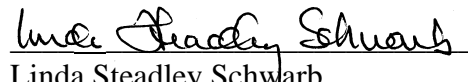
400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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 medical evidence to support a finding that, despite the loss of use of his left (non-dominant) hand and arm, 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. It is recommended that the department provide claimant with a referral to Michigan Rehabilitation Services.


Linda Steadley Schwarb
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 30, 2010

Date Mailed: March 30, 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:

