

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.: 2008-15935
Issue No.: 2009/4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
September 8, 2008
Wayne County DHS (76)

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 September 8, 2008. The claimant appeared and testified. The claimant was represented by [REDACTED] of [REDACTED]. Following the hearing, the record was kept open for 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) On July 2, 2007, an application was filed on claimant's behalf for MA-P and SDA benefits. The application requested MA-P retroactive to June 2007.

- (2) On December 10, 2007, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- (3) On February 26, 2008, a hearing request was filed to protest the department's determination.
- (4) Claimant, age 46, has an 11th grade education.
- (5) Claimant last worked in 2005 as a housekeeper. Claimant has also performed relevant work as a cook at [REDACTED]. Claimant's relevant work history consists exclusively of unskilled work activities.
- (6) Claimant has a history of polysubstance abuse, tobacco abuse, and mental health problems.
- (7) Claimant was hospitalized [REDACTED] through [REDACTED] following complaints of chest pain. She underwent a heart catheterization and stent placement.
- (8) Claimant was rehospitalized [REDACTED] through [REDACTED] for unstable angina.
- (9) Claimant was hospitalized [REDACTED] through [REDACTED] as a result of hypertensive urgency.
- (10) Claimant was hospitalized [REDACTED] through [REDACTED] with complaints of chest pain.
- (11) Claimant was hospitalized [REDACTED] through [REDACTED] with complaints of chest pain thought to be secondary to hypertensive urgency and possibly cocaine abuse.
- (12) Claimant currently suffers from poorly controlled hypertension, coronary artery disease with stent placement, hyperlipidemia, chronic daily headaches, tobacco abuse, and mood disorder.

- (13) Claimant complains of shortness of breath, chest pain, fatigue, anxiety, depression, and low back pain.
- (14) Claimant has severe limitations upon her ability to walk and stand for long periods of time and lift heavy objects as well as limitations with regard to understanding, carrying out, and remembering simple instructions; use of judgment; responding appropriately to others; and dealing with changes in a routine work setting. Claimant's limitations have lasted or are expected to last 12 months or more.
- (15) 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 is so impaired as to be incapable of engaging in any substantial gainful activity 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 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 mean 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 and mental limitations upon claimant’s ability to perform basic work activities such as walking and standing for long periods of time and lifting heavy objects; understanding, carrying out, and remembering simple instructions; use of judgment; responding appropriately to supervision, co-workers, and usual work situations; and dealing with changes in a routine work setting. 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 walking, standing, heavy lifting or personal interaction required by her past employment. Claimant has presented the required medical data and evidence necessary to support a finding that she 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). Once claimant reaches Step 5 in the sequential review process, claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that the claimant has the residual functional capacity for substantial gainful activity.

In this matter, claimant has a history of polysubstance abuse, tobacco abuse, and mental health problems. She was hospitalized in June 2007 for chest pain. Claimant underwent heart catheterization with stent placement. Thereafter, she has numerous additional hospitalizations for

chest pain and hypertensive urgency. Claimant was seen by a consulting internist for the department on [REDACTED]. The consultant provided the following impression:

1. **HYPERTENSION:** The examinee has a history of hypertension, under very poor control. She has been admitted on multiple occasions. She also developed coronary artery disease and did have placement of stents in June 2007, and she had a heart attack at that time as well. The examinee continues to have very poor control of her blood pressure and is taking medications, she states, as prescribed. She does have a previous history of smoking as well as using crack cocaine.
2. **DEPRESSION:** The examinee has a history of chronic depression and is currently not taking medications. She has been admitted on multiple occasions. She states that she stopped taking Synequan in 1989 and she has been admitted to [REDACTED] as well as [REDACTED] in the past.
3. **HYPERLIPIDEMIA:** The examinee has a history of hyperlipidemia. She is currently on medication.
4. **HEADACHES:** The examinee states that she has headaches as long as she can remember and continues to have headaches on a daily basis.

Claimant was seen by a consulting psychologist for the department on [REDACTED].

The consultant diagnosed claimant with mood disorder, NOS; rule out Cannabis abuse; rule out alcohol abuse; and rule out personality disorder, NOS. The consultant found claimant to be markedly limited in the following areas: the ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; the ability to sustain an ordinary routine without supervision; the ability to work in coordination with or proximity to others without being distracted by them; the ability to complete a normal work day and work week without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods; and the ability to get along with coworkers and peers without distracting them or exhibiting behavioral extremes. The consultant found claimant to be moderately limited with regard to the ability to understand and remember detailed instructions; the ability to carry out detailed instructions; the ability to maintain attention

and concentration for extended periods; the ability to make simple work-related decisions; the ability to interact appropriately with the general public; the ability to accept instructions and respond appropriately to criticism from supervisors; the ability to respond appropriately to change in a work setting; the ability to be aware of normal hazards and take appropriate precautions; and the ability to travel in unfamiliar places or use public transportation.

After careful review of claimant's extensive medical record and the Administrative Law Judge's personal interaction with claimant at the hearing, this Administrative Law Judge finds that claimant's exertional and non-exertional impairments render claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The department has failed to provide vocational evidence which establishes that claimant has the residual functional capacity for substantial gainful activity and that, given claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which the claimant could perform despite claimant's limitations. Accordingly, this Administrative Law Judge concludes that claimant is 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 as much as claimant has been found “disabled” for purposes of MA, she must also be found “disabled” for purposes of SDA benefits.

The Medical Social Work Consultant (MSWC), in conjunction with the Medical Review Team (MRT), is to consider the appropriateness of directing claimant to participate in appropriate mental health and/or substance abuse treatment. Unless the MSWC determines that claimant has good cause for failure to participate in mandatory treatment, claimant will lose eligibility for MA-P and SDA benefits. PEM, Item 261, pp. 3 and 4 & MA-P, PEM 260, p. 5.

Further, a referral is to be made to Adult Protective Services for an evaluation of possible financial management problems. Specifically, before SDA benefits may be paid to claimant, Adult Protective Services is to assess the appropriateness of a payee or conservatorship for claimant because of mental health and/or substance abuse or other problems which may prevent adequate management or discharge of financial or other personal affairs. See Adult Services Manual, Item 383.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant meets the definition of medically disabled under the Medical Assistance and State Disability Assistance programs as of June 2007.

Accordingly, the department is ordered to initiate a review of the July 2, 2007 application, if it has not already done so, to determine if all other non-medical eligibility criteria are met. The department shall inform claimant and her authorized representative of its

