

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: 2008-22262

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 20, 2008

Macomb County DHS

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 20, 2008. Claimant was represented by her mother and authorized representative

[REDACTED] 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) 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 January 31, 2008, claimant filed an application for MA-P and State Disability Assistance (SDA) program benefits. Claimant did not request retroactive medical coverage.

(2) On May 14, 2008, the department granted SDA benefits based upon disability but denied MA-P benefits based upon the belief that claimant did not meet the requisite disability criteria.

(3) On May 28, 2008, a hearing request was filed to protest the department's determination.

(4) Claimant, age 29, has a high school education.

(5) Claimant last worked in 2007 working with mentally disabled children.

(6) Claimant has a history of mental health problems with hospitalization. Claimant was hospitalized at [REDACTED] from [REDACTED] thru [REDACTED]. She was admitted with insomnia, anxiety, and intermittent hallucinations. During hospitalization, claimant became more coherent but continued to be hyperverbal, agitated, and reactive. Her discharge diagnosis was major depression, recurrent.

(7) Claimant suffers from bipolar disorder, most recent episode mixed, severe, without psychotic features; generalized anxiety disorder; adult attention deficit hyperactivity disorder, and polysubstance dependence. Her GAF score on December 4, 2008 was 42.

(8) Claimant has severe limitations upon her use of judgment, ability to respond appropriately to others, and deal with change. Claimant's limitations have lasted or are expected to last 12 months or more.

(9) Claimant is capable of meeting the physical demands associated with employment on a regular and intellectual basis.

(10) Claimant's psychiatric functioning has prevented and is expected to prevent all substantial gainful activity for 12 months or more.

(11) At the time of the hearing, claimant continued to receive SDA benefits based upon disability.

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 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 she has significant mental limitations upon her ability to perform basic work activities such as 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).

Federal regulations at 20 CFR 416.920a (d)(3) provide that when a person has a severe mental impairment(s), but the impairment(s) does not meet or equal a listing, a residual functional capacity assessment must be done. Residual functional capacity means simply: "What can you still do despite your limitations?" 20 CFR 416.945.

In this case, claimant has a history of mental health problems with hospitalization. She was hospitalized in January of 2008 as a result of insomnia, anxiety, and intermittent hallucinations. During hospitalization she became more coherent but continued to be hyperverbal, agitated, and reactive with significant mood vacillation. Her discharge diagnosis was major depression, recurrent. On February 26, 2008, claimant's treating psychiatrist

██████████ reported that claimant has been diagnosed with bipolar disorder, most recent episode manic, severe, with psychotic features; attention deficit hyperactivity disorder; and generalized anxiety disorder. On March 24, 2008, claimant's treating primary care physician opined that claimant was capable of occasionally lifting up to 20 pounds as well as capable of standing and walking at least two hours in an eight-hour workday and capable of repetitive activities with the upper and lower extremities. On December 4, 2008, treating psychiatrist ██████████ reported that claimant's current diagnosis was bipolar disorder, most recent episode mixed, severe without psychotic features; generalized anxiety disorder; attention deficit hyperactivity disorder; and polysubstance dependence. ██████████ indicated that claimant's current GAF score was 42. ██████████ indicated that claimant was markedly to moderately limited in every area of understanding and memory, sustained concentration and persistence, social interaction, and adaption. Based upon the hearing record, the undersigned finds that although claimant has the physical and intellectual capacity for work, her psychiatric functioning precludes work activities on a regular and continuing basis. Further, the undersigned finds that claimant's impairment has lasted or is expected to last 12 months or more. Accordingly, the undersigned finds that claimant is 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 claimant meets the definition of medically disabled under the Medical Assistance program as of January of 2008.

Accordingly, the department is ORDERED to initiate a review of the January 31, 2008 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 determination in writing. Assuming that claimant is otherwise eligible for program benefits, the department shall review claimant's continued eligibility for benefits in March of 2010.

/s/

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

Date Signed: 6/16/09

Date Mailed: 6/22/09

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 receipt 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/pj

cc:

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