

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.: 2008-25752
Issue No.: 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
February 25, 2009
Tuscola 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 February 25, 2009. The claimant appeared and testified. 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 State Disability Assistance (SDA) 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) Claimant has been an ongoing recipient of SDA benefits since February 1, 2006 as a result of participation in the [REDACTED] Program.

- (2) Claimant's participation in the [REDACTED] Program terminated on October 17, 2007.
- (3) On July 15, 2008, the department notified claimant that her SDA was expected to terminate on July 29, 2008 because claimant was "no longer disabled."
- (4) On July 18, 2008, claimant filed a timely hearing request to protest the department's proposed negative action.
- (5) Thereafter, the department deleted its proposed negative action pending the outcome of the instant hearing.
- (6) Claimant, age 46, has an 8th grade education with a reported history of special education services.
- (7) Claimant last worked in [REDACTED] as a seasonal laborer for [REDACTED]. Claimant has also performed work as a landscape employee and as a general factory laborer. Claimant's relevant work history consists exclusively of unskilled work activities involving heavy manual labor.
- (8) Claimant suffers from chronic low back and neck pain secondary to degenerative disk disease of the spine; traumatic brain injury; post-traumatic migraine disorder; chronic daily headaches; advanced degenerative joint disease of the left knee (claimant is a candidate for a total knee replacement); bipolar disorder, depressed; post-traumatic stress disorder, chronic; pain disorder with both psychological features and general medical condition; attention deficit hyperactivity disorder, combined type; impulse disorder, NOS; nicotine dependency; cocaine dependency, in remission; and mathematics disorder. Claimant's GAF score in [REDACTED] was 38.

- (9) Claimant has severe limitations upon her ability to walk, stand, lift, and carry as well as limitations upon her ability to interact with others and respond to changes in a work setting. Claimant limitations have lasted for 12 months or more.
- (10) 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 regular and continuing basis.

CONCLUSIONS OF LAW

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 a person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) standards for at least 90 days. Other than need more limited 90 day duration, the department must use the same operative definition for "disabled" when considering eligibility for SDA as used for SSI under Title XVI of the Social Security Act. 42 CFR 435.540 (a). Disability is defined as follows:

"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 SDA at this step in the sequential evaluation process.

Secondly, in order to be considered for purposes of SDA, 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 and mental limitations upon her ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; 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, lifting, carrying, or personal interaction required by her past employment. Claimant has presented the required medical data and evidence necessary to support the 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 case, claimant has a history of traumatic brain injury with post-traumatic migraine disorder. An x-ray of claimant's lumbar spine performed on [REDACTED] documented advanced degenerative narrowing of the L5-S1 intervertebral disk space. A MRI of claimant's

left knee performed on [REDACTED], documented a complex type meniscal tear at the posterior horn of the medial meniscus. Findings were consistent with osteochondral defect with underlying narrow edema and contusion with possible developing osteonecrosis. A MRI of claimant's lumbar spine performed on [REDACTED] revealed mild to moderate degenerative disk changes in the lower lumbar region, most significant at L5-S1 where degenerative changes resulting in moderate neural foraminal encroachment. Mild to moderate spinal canal stenosis was present at L4-5 which was associated with a small annular tear of the L4-5 disk. [REDACTED], claimant's primary care physician, [REDACTED], opined that claimant was limited to occasionally lifting less than 10 lbs. and incapable of pushing/pulling with a bilateral upper extremity. On [REDACTED], the treating physician continued his opinion that claimant was limited to lifting less than 10 lbs. On [REDACTED], claimant's treating orthopedist, [REDACTED], reported that claimant has significant arthritis in the left knee and that she was a candidate for a total knee replacement.

On [REDACTED], claimant's treating psychiatrist at [REDACTED] diagnosis claimant with bi-polar disorder, depressed, without psychotic features; post-traumatic stress disorder, chronic; pain disorder with both psychological features and a general medical condition; attention deficit hyperactivity disorder, combined type; impulse disorder, not otherwise specified; nicotine dependence; cocaine dependence, in remission; and mathematics disorder. The treating psychiatrist indicated that claimant had a current GAS score of 38. On [REDACTED], the treating psychiatrist continued claimant's diagnosis and again indicated that claimant had a current GAS score of 38.

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 SDA 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 State Disability Assistance programs.

Accordingly, assuming that claimant continues to meet all other none medical eligibility criteria, the department shall continue claimant's SDA program benefits. Assuming that claimant is otherwise eligible for program benefits, the department shall review claimant's continued eligibility in May 2010.

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

Date Signed: 07/20/09

Date Mailed: 07/23/09

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 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/dj

cc:

