

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: 2008-26076

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 13, 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 October 13, 2008. Claimant appeared and testified. Claimant was represented by [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 December 7, 2007, an application was filed on claimant's behalf for MA-P and State Disability Assistance (SDA) program benefits. The application requested MA-P retroactive to November of 2007.

(2) On February 4, 2008, the department granted SDA benefits based upon disability but denied MA-P benefits.

(3) On May 1, 2008, a hearing request was filed to protest the department's denial of claimant's request for MA-P benefits.

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

(5) Claimant, age 31, has an 11th grade education. Claimant earned a GED and earned some college credits.

(6) Claimant has a history of asthma, bronchitis, pneumonia, anxiety, depression, panic disorder, and common variable immune deficiency syndrome.

(7) Claimant was hospitalized [REDACTED]. Her discharge diagnosis on September 14, 2007 was cytomegalovirus colitis; common variable immunodeficiency; bilateral pneumonia; and nephrolithiasis.

(8) Claimant was hospitalized [REDACTED]. Her discharge diagnosis was abdominal pain in the left upper quadrant with recent history of cytomegalovirus colitis; nausea, vomiting, and diarrhea; left kidney stone; common variable immunodeficiency; history of endometriosis; and clostridium difficile colitis.

(9) Claimant was re-hospitalized [REDACTED]. Her discharge diagnosis was cytomegalovirus colitis; acute sinusitis; vaginal yeast infection; hypomagnesemia; common variable immune deficiency; and depression.

(10) Claimant was re-hospitalized [REDACTED]. Her discharge diagnosis was pneumonia; common variable immunodeficiency; left back pain; leukopenia; anemia; hypomagnesemia; tachycardia, resolved; and residual lymphoma (splenomegaly and marked mesenteric adenopathy suggesting lymphoma.)

(11) Claimant suffers from common variable immunodeficiency disease with frequent hospitalization for chronic diarrhea and CMV colitis; chronic migraine headaches; neutropenia and anemia; and bipolar disorder, depressed type. Claimant's GAF score in October of 2008 was 45.

(12) Claimant has severe limitations upon her ability to engage in prolonged walking and standing or heavy lifting as well as ability to respond appropriately to others and deal with changes in a routine work setting. Claimant's limitations have lasted for 12 months or more.

(13) 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 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 physical and mental limitations upon her ability to perform basic work activities such as walking, standing, 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, 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 case, claimant has had frequent hospitalization as a result of pneumonia, chronic diarrhea, and CMV colitis as well as common variable immunodeficiency disease. On December 15, 2008, claimant's family physician [REDACTED] diagnosed claimant with common variable immunodeficiency, migraines, anemia, and depression. The physician opined that claimant was limited to lifting less than 10 pounds as well as limited to standing and walking less than two hours in an eight-hour workday and sitting less than six hours in an eight-hour workday. The physician noted that claimant suffers from frequent migraine headaches, diffuse abdominal pain, and issues related to her common variable immunodeficiency condition. Claimant was seen by a consulting internist for the department on October 27, 2008. The consultant provided the following diagnoses and impression:

- (1) Alleged history of recurrent infections involving the eyes, ears, and the lungs secondary to hypogammaglobulinemia. In my opinion patient possibly has chronic bronchitis and/or bronchiectasis involving both lungs. Patient also has a history of partial resection of the right lung.
- (2) Alleged history of multiple joint pains. No abnormal physical findings were noted in the physical examination.
- (3) Alleged history of depression. Her memory is good. She was in fair grooming and hygiene. She responded fairly well to the examining situation.

Claimant was seen by a consulting psychiatrist for the department on October 27, 2008. The consultant diagnosed claimant with bipolar disorder, depressed type; rule out alcohol abuse; and paranoid personality trait. The consultant gave claimant a current GAF score of 45.

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.

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 November of 2007.

Accordingly, the department is ORDERED to initiate a review of the December 7, 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 determination in writing. Assuming that claimant is otherwise eligible for program benefits, the department shall review claimant's continued eligibility for program benefits in April of 2010.

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

Date Signed: 6/18/09

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:

