

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: 2008-29943
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 26, 2008
Muskegon 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 26, 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 June 30, 2008, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to March 2008.

- (2) On August 21, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- (3) On August 22, 2008, a hearing request was filed to protest the department's determination.
- (4) Claimant, age 47, has a high school education and 2 years of college.
- (5) Claimant last worked in May 2008 as a supervisory licensed practical nurse in a long term care facility. Claimant's relevant work experience consists exclusively of work as a licensed practical nurse supervisor.
- (6) Claimant has a history of varicose vein surgery and a hysterectomy.
- (7) Claimant had an emergency room visit in [REDACTED] and again in [REDACTED] as a result of shortness of breath.
- (8) On [REDACTED], claimant underwent a video assisted thoracoscopy surgery with subsequent left upper lobectomy for diagnosis and treatment of a left upper lobe mass. Subsequent pathology was consistent with a caseating granuloma of the left upper lobe. Claimant's recovery from her thoracotomy was unremarkable.
- (9) Claimant currently suffers from bipolar disorder II, panic disorder with agoraphobia, and tobacco abuse. Claimant's GAF score on [REDACTED] was 65.
- (10) Claimant has severe limitations upon her ability to walk and stand for prolonged periods of time and lift extremely heavy objects. Claimant's limitations have lasted or are expected to last 12 months or more.
- (11) 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 has the physical and mental capacity to engage in simple, unskilled sedentary work activities 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, the claimant has the responsibility to prove that she 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 and mental limitations upon claimant’s ability to perform basic work activities such as walking and standing for prolonged periods of time and lifting extremely heavy objects as well as difficulties responding appropriately to others 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 prolonged walking and standing and/or heavy lifting required by her past employment as a licensed practical nurse. Claimant has presented a hearing record which suggests 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).

This Administrative Law Judge finds that claimant's residual functional capacity for work activities on a regular and continuing basis does, at the very least, include the ability to meet the physical and mental demand required to perform simple, unskilled sedentary work.

Sedentary work is defined as follows:

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like

docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

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 a wide range of sedentary work. Claimant underwent a thoracotomy with subsequent left upper lobectomy for diagnosis and treatment of a left upper lobe mass. The pathology was consistent with caseating granuloma of the left upper lobe. There was no evidence of any carcinoma. On [REDACTED], claimant's treating cardiothoracic surgeon [REDACTED] indicated that claimant was coming along well from her surgery. Her cardiac examination was said to be within normal limits and her thoracotomy incision was said to be well healed. The surgeon noted that he was very pleased with claimant's progress. The treating surgeon reported on [REDACTED], that claimant had done well since her operation. He noted that her pain had decreased immensely. Her cardiac and pulmonary examination was said to be within normal limits, her thoracotomy incision was well healed, and her x-ray revealed the expected post operative appearance. The surgeon indicated that claimant has recovered well and that she would need no follow up review. On [REDACTED], the cardiothoracic surgeon diagnosed with granulomatous lung disease. He indicated that claimant's clinical condition was improving.

On [REDACTED], claimant's treating psychiatrist [REDACTED] diagnosed claimant with bipolar II, panic disorder with agoraphobia, and caffeine disorder. Claimant was given a GAF of 55. On [REDACTED], [REDACTED] diagnosed claimant with bipolar II disorder and panic disorder with agoraphobia. Claimant was given a current GAF score of 65. After a review of

claimant's hospital records, reports from claimant's treating physicians, and x-ray results, claimant has failed to establish limitations which would compromise her ability to perform a wide range of sedentary work activities on a regular and continuing basis. See Social Security Rulings 83-10 & 96-9p. 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 has the physical and mental capacity to engage in simple, unskilled, sedentary work activities on a regular and continuing basis.

Considering that claimant, at age 47, is a younger individual, has a high school education, has an unskilled work history, and has sustained work capacity for sedentary work, the undersigned finds that claimant's impairments do not prevent her from doing other work. As a guide, see 20 CFR, Part 404, Subpart P, Appendix 2, Table 1, Rule 201.18. Accordingly, the undersigned must find that claimant is not 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 the Department of Human Services properly determined that claimant is not "disabled" for purposes of the Medical Assistance program.

According, the department's determination in this matter is hereby UPHELD.

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

Date Signed: 06/09/09

Date Mailed: 06/09/09

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/jlg

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