

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.: 2008-4626
Issue No.: 2009/4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
August 11, 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 August 11, 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 January 29, 2007, an application was filed on claimant's behalf for MA-P and SDA benefits. The application requested MA-P retroactive to October 2006.
- (2) On June 27, 2007, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- (3) On September 20, 2007, a hearing request was filed to protest the department's determination.
- (4) Claimant, age 28, has an 8th grade education. Claimant was reported to have received special education services throughout his educational experience. Claimant is functionally illiterate.
- (5) Claimant has had no relevant work experience.
- (6) Claimant was hospitalized [REDACTED] through [REDACTED]. He was diagnosed with new onset insulin dependent diabetes mellitus, gastritis, and sickle cell trait.
- (7) Claimant was rehospitalized [REDACTED] through [REDACTED] for uncontrolled insulin dependent diabetes mellitus.
- (8) Claimant was hospitalized [REDACTED] through [REDACTED] for hyperglycemia, electrolyte imbalance, and hypophosphatemia.
- (9) Claimant was hospitalized [REDACTED] through [REDACTED] for diabetic ketoacidosis and asymptomatic bradycardia.
- (10) Claimant was hospitalized [REDACTED] for uncontrolled diabetes mellitus.
- (11) Claimant was rehospitalized [REDACTED] through [REDACTED] for diabetic ketoacidosis.
- (12) Claimant was hospitalized [REDACTED] for uncontrolled insulin dependent diabetes mellitus.

- (13) Claimant was hospitalized [REDACTED] for diabetic ketoacidosis.
- (14) Claimant currently suffers from poorly controlled insulin dependent diabetes mellitus, sickle cell trait, expressive language disorder, cannabis and nicotine abuse, depression NOS with style of paranoia, cognitive disorder NOS (full scale IQ of 65), and rule out mental retardation with commensurate deficits in reading, writing, and arithmetic (functional illiteracy).
- (15) Claimant has severe limitations with regard to understanding, carrying out, and remembering simple instructions; responding appropriately to others; and dealing with changes in a routine work setting. Claimant's limitations have lasted for 12 months or more.

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 mental limitations upon claimant’s ability to perform basic work activities such as 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. Based upon claimant’s diagnosis as stated above and the undersigned Administrative Law Judge’s personal observations of claimant at the hearing, the Administrative Law Judge finds that the claimant’s impairments meet or equal a listed impairment. See Appendix I of Subpart P of 20 CFR, Part 404, Part A, Section 12.05D.

Claimant was evaluated by a consulting psychologist for the department on [REDACTED] and

██████████. Following extensive testing, the consultant found claimant to have a full scale IQ of 65, a verbal IQ of 67, and a performance IQ of 69. The consultant wrote as follows:

“...results of this evaluation... reveals: history of learning disorder with expulsion from school in the 8th grade, limited cognitive fund, (mental deficiency shown herein), illiteracy in reading, writing and arithmetic shown here. There also appears to be a general depression which is atypical, and has an element of suspiciousness bordering on paranoia mixed with it. He seems unaware of deficits.... He has notably impaired memory.... He would be expected to have trouble getting correct change at the store and not be suitable for handling his own money matters.”

“Gainful employment would seem precluded, permanently due to his demonstrated impaired cognition and memory and learning abilities. No serious employer would hire him...”

The consultant diagnosed claimant with expressive language disorder; cannabis abuse, also nicotine abuse; depression NOS with style of paranoia; cognitive disorder NOS; and rule out mental retardation with commensurate deficits in reading, writing, and arithmetic (functionally illiteracy) and concurrent deficiencies in adaptive functioning, including work, functional academic skills, independent living, and interpersonal relationships. The consultant gave claimant a current GAF score of 50 with a poor prognosis. The consultant found claimant to be markedly to moderately limited in nearly every category of understanding and memory, sustained concentration and persistence, social interaction, and adaption. The record supports a finding that claimant has a valid verbal, performance, or full scale IQ of 60 – 70 which results in marked difficulties in maintaining social functioning and marked difficulties in maintaining concentration, persistence, and pace. Accordingly, the undersigned finds 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, he must also be found “disabled” for purposes of SDA benefits.

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 cognitive or functional limitations 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 October 2006.

Accordingly, the department is ordered to initiate a review of the January 29, 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 his 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 June 2010.

Further, a referral is to be made to Adult Protective Services consistent with this order.

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

Date Signed: 07/28/09

Date Mailed: 07/29/09

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 the Circuit 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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