

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: 2008-24496
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 20, 2009
Emmet 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 January 20, 2009. Claimant appeared and testified. 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 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) Claimant has been an ongoing recipient of SDA benefits based upon participation in the Michigan Rehabilitative Services (MRS) program.

- (2) Following MRS termination of claimant from their program, the department considered claimant's "disability" for purposes of eligibility for the SDA program.
- (3) On June 9, 2008, the department notified claimant that it intended to terminate claimant's SDA benefits effective June 24, 2008, based on the belief that the claimant did not meet the requisite disability criteria.
- (4) On June 19, 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 a ninth grade education.
- (7) Claimant last worked in 2004 as a home help care provider. Claimant has performed relevant work as a housekeeper and as a cook. Claimant's relevant work history consists exclusively of unskilled work activities.
- (8) Claimant has a history of mental health problems with psychiatric hospitalization, substance abuse (reportedly in full remission for over 15 years), thyroid abnormality, degenerative joint disease, and fibromyalgia.
- (9) Claimant currently suffers from obstructive sleep apnea associated with hypoxia (per a sleep study of [REDACTED]); fibromyalgia; obesity; hyperlipidemia; Hashimoto's thyroiditis; impingement syndrome of the right shoulder with significant arthritic changes of the AC joint (per an MRI of [REDACTED]); post traumatic stress disorder, chronic and marked; polysubstance abuse in full sustained remission; and social phobia. Claimant's GAF score on [REDACTED] was 45.

- (10) Claimant has severe limitations upon her ability to walk, stand, sit, lift, carry, and handle as well as upon her ability to understand, carry out, and remembering simple instructions; use of judgment; ability to respond appropriately to others; and ability to deal with changes in a routine work setting. 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 is so impaired as to be incapable of engaging in any substantial gainful activity on a 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 the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) standards for at least 90 days. Other than the more limited 90 day duration, the department must use the same operative definition for "disabled" for SDA as used for SSI under the 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 SDA at this step in the sequential evaluation process.

Secondly, in order to be considered disabled 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 claimant’s 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 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 matter, claimant has had a history of thyroid abnormalities. A biopsy of the right thyroid on [REDACTED] revealed features suggestive of Hashimoto's thyroiditis. On [REDACTED], claimant underwent a sleep study which resulted in a finding of obstructive

sleep apnea syndrome associated with hypoxia. On [REDACTED], claimant's treating physician opined that claimant was limited to one hour of sitting, one hour of standing, and one hour of walking in an eight hour work day. The physician indicated that claimant was limited to occasionally lifting and carrying up to 10lbs. On [REDACTED], another treating physician diagnosed claimant with hypothyroidism, hyperlipidemia, depression, fibromyalgia, sleep apnea, obesity, impingement syndrome of the right shoulder, chest pain, and left shoulder pain. The physician indicated that claimant was limited to occasionally lifting less than 10 lbs as well as limited to standing and walking less than two hours in an eight hour work day and sitting less than six hours in an eight hour work day. The physician indicated that claimant was incapable of reaching or pushing/pulling with the bilateral upper extremities.

On [REDACTED], claimant's treating psychiatrist from [REDACTED] [REDACTED] diagnosed claimant with post traumatic stress disorder, chronic and polysubstance abuse in sustained full remission. On [REDACTED], the treating psychiatrist continued per diagnosis and assessment of claimant's condition. On [REDACTED], the psychiatrist opined that claimant had no useful ability to function in the following areas: work in coordination with or proximity to others without being underly distracted; complete a normal work day and work week without interruption from psychologically based symptoms; accept instructions and respond appropriately to criticism from supervisors; get along with co-workers or peers without unduly distracting them or exhibiting behavioral extremes; respond appropriately to changes in a routine work setting; carry out detailed instructions; deal with stress of semi-skilled or skilled work; interact appropriately with the general public; travel in unfamiliar places; and use public transportation. [REDACTED] found claimant with seriously limited with regard to her ability to function in the following areas: remember work-like procedures; understand and remember very

short or simple instructions; maintain attention for a two hour segment; maintain regular attendance and be punctual within customary, usual strict tolerances; sustain ordinary routine without special supervision; make simple work-related decisions; perform at a consistent pace without an unreasonable number and length of rest periods; ask simple questions or accept assistance; deal with normal work stress; understand and remember detailed instructions; set realistic goals or make plans independently of others; and maintain socially appropriate behavior. The psychiatrist indicated that on average, she would anticipate that claimant's impairments or treatment would cause claimant to be absent from work more than three times a month. On [REDACTED], claimant's treating psychologist diagnosed claimant with post traumatic disorder and social-phobia. Claimant was given a GAF score of 48.

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 program as of June 2008.

Accordingly, the department is ordered to review claimant's non-medical eligibility for purposes of SDA benefits. The department shall inform claimant of its determination in writing. Assuming that claimant continues to be otherwise eligible for SDA benefits, the department shall review claimant's continued eligibility for program benefits in December 2009.

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

Date Signed: 06/02/09

Date Mailed: 06/03/09

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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