

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: 2008-26328

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 19, 2008

Kent 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 19, 2008. Claimant appeared and testified. Claimant was represented by [REDACTED], a homeless outreach worker at [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) 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 February 8, 2008, claimant filed an application for MA-P and SDA benefits.

Claimant did not request retroactive medical coverage.

(2) On May 27, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.

(3) On July 17, 2008, claimant filed a hearing request to protest the department's determination.

(4) Claimant, age 60, has a high school education. Claimant reportedly has difficulty with reading, writing, and basic math.

(5) Claimant's last relevant work was performed in 2001 sanding wooden crosses and inspecting them. Claimant has also performed relevant work as a security guard and hotel housekeeper. Claimant's relevant work history consists exclusively of unskilled work activities.

(6) Claimant suffers from borderline intellectual functioning with a verbal IQ of 71, performance IQ of 81, and full scale IQ of 74.

(7) Claimant is capable of meeting the physical and intellectual demands associated with simple, unskilled, employment 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, 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 from 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 intellectual limitations upon her ability to perform basic work activities such as understanding, carrying out, and remembering simple instructions. 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 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, Section 12.05. Claimant is clearly independent with regard to her personal needs (e.g., toileting, eating, dressing, and bathing) and able to follow directions such as required by the use of standardized measures of intellectual functioning. Claimant’s valid verbal, performance, and full scale IQ testing is too high to allow her to meet or equal Listing 12.05. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

The record does not support a finding that claimant has any physical limitations or incapacities. There is no medical evidence to suggest that claimant has any physical limitations. Claimant testified at the hearing that she is capable of housework, grocery shopping, food preparation, and laundry. Claimant was unable to think of anything that she could not do or

needed help with. Claimant testified that, because she does not drive, she frequently will walk approximately 30 minutes to and from her Bible study and other places in the community.

Claimant testified that she sees her doctor approximately every five to six months and that she has been given no physical restrictions. The record supports a finding that claimant's only limitation is borderline intellectual functioning.

Federal regulations at 20 CFR 416.920a (d)(3) provide that when a person has a severe mental impairment(s), but the impairment(s) does not meet or equal a listing, a residual functional capacity assessment must be done. Residual functional capacity means simply: "What can you still do despite your limitations?" 20 CFR 416.945.

Claimant testified at the hearing that, despite graduating from high school, she has difficulties reading, writing, and doing basic math. Claimant was seen by a consulting psychologist for the department on December 9, 2008. The consultant, after evaluation and testing, diagnosed claimant with borderline intellectual functioning. Claimant was found to have a verbal IQ of 71, a performance IQ of 81, and a full scale IQ of 74. Claimant's overall intellectual functioning is in the borderline range. Claimant has had relevant work experiences in the past. Her intellectual functioning did not preclude past employment. The record does not support a finding that claimant currently has any additional impairments which would preclude claimant from working. The record supports a finding that claimant is capable of simple, unskilled work activities. The medical record and claimant's own testimony as to her activities in the community will not support a finding that claimant's mental residual functional capacity precludes simple, unskilled work activities on a regular and continuing basis. Accordingly, the department's determination in this matter must be affirmed.

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 this case, there is insufficient medical evidence to support a finding that claimant is incapacitated or unable to work under Social Security Administration disability standards for at least 90 days. Therefore, the undersigned must find that claimant is not 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 is not "disabled" for purposes of the Medical Assistance and State Disability Assistance programs.

Accordingly, the department's determination in this matter is hereby **AFFIRMED**.

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

Date Signed: 6/16/09

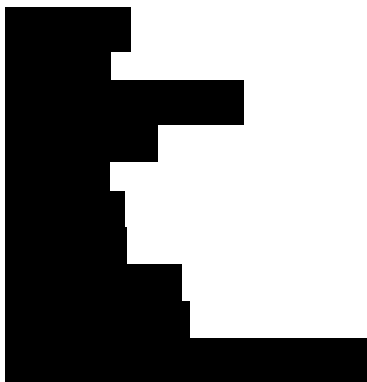
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NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration 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:

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