

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: 2008-9222  
Issue No: 2009/4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
December 3, 2008  
Wayne County DHS (82)

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 December 3, 2008. Claimant appeared and testified. Claimant was represented by [REDACTED] of [REDACTED], Inc. 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 20, 2007, an application was filed on claimant's behalf for MA-P and SDA benefits. The application requested MA-P retroactive to November 2006.
- (2) On August 22, 2007, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- (3) On November 15, 2007, a hearing request was filed to protest the department's determination.
- (4) Claimant, age 50, has a high school education and completed a 2 year business college program.
- (5) Claimant worked at [REDACTED] from January 2, 2008 through December 19, 2008. Claimant worked approximately 35 – 37 hours a week answering the phone and performing computer work. In exchange for her services, claimant received a small stipend as well as medical coverage. Claimant's relevant work experience also includes light industrial factory work.
- (6) Claimant has a history of polysubstance abuse, hypertension, chronic headaches, and past psychiatric treatments. Claimant's last reported psychiatric diagnosis was on [REDACTED], [REDACTED] when claimant was diagnosed with bipolar disorder, NOS, and polysubstance dependency.
- (7) Claimant last received psychiatric services in January 2008.
- (8) Prior to the hearing, claimant completed a 12 month residential treatment program for women with substance abuse issues.
- (9) At the time of the hearing, claimant had resided in a woman's shelter since February 2008. As a condition of residence in the shelter, claimant participated in a weekly life

skills program intended for persons with a substance abuse history. Claimant reported that she would be allowed to remain in the shelter for up to 2 years.

- (10) Claimant was hospitalized [REDACTED] to [REDACTED] as a result of an intractable headache. Her head CT was negative, her serologic workup was negative and her MRI was negative. Claimant underwent an occipital nerve block and her headache improved significantly.
- (11) On [REDACTED], claimant was treated in an emergency room for migraine headache.
- (12) On [REDACTED], claimant was treated in an emergency room for abdominal pain and headache.
- (13) On [REDACTED] through [REDACTED], claimant was hospitalized for intractable headache.
- (14) On [REDACTED] through [REDACTED], claimant was hospitalized for intractable headache.
- (15) On [REDACTED], claimant sought emergency room treatment for knee pain.
- (16) On [REDACTED], claimant sought emergency room treatment for knee pain.
- (17) On [REDACTED], claimant reported to her treating neurologist [REDACTED] that she had experienced no serious headaches in the past 2 months. Her neurologist provided an impression of “chronic headaches syndrome suggestive of chronic migraine, combination or tension-type headache; much improved.”
- (18) At the hearing, claimant complained of occasional migraine headaches as well as being “emotional” and depressed when she experiences a headache.
- (19) 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 light 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, at the hearing, claimant reported that she was not currently working. Accordingly, 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 (6<sup>th</sup> 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 the suggestion that claimant has significant limitations upon claimant’s ability to perform basic work activities such as engaging in heavy, strenuous, physical activity and/or lifting heavy weights. 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). In this case, claimant reported that her past relevant work included light industrial work in a factory setting such as assembly line work. At the time of the hearing, claimant was “volunteering” at [REDACTED] where she worked 35 – 37 hours a week answering the phone and performing computer work. Claimant was paid a small stipend and provided medical coverage. Claimant apparently did this volunteer work from [REDACTED] through [REDACTED]. At the same time, claimant was participating in a weekly life skills program designed for persons with a history of substance abuse. Claimant reported that she also attended NA meetings on regular basis. Claimant testified that she had not participated in mental health treatment since January 2008. Further, when visiting her treating neurologist [REDACTED] on [REDACTED], claimant report that she had experienced no serious headaches in the previous 2 months. At that time, the treating neurologist diagnosed claimant with “chronic headaches syndrome suggestive of chronic migraines, combination or tension-type headache; much improved.” The hearing record will not support a find that claimant is not capable of her past work activities. Accordingly, claimant can not be to be found disabled for purposes of MA. Even if claimant were found to be incapable of past work activities, she would still found capable of performing other 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 you 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 include the ability to meet the physical and mental demands required to perform light work. Light work is defined as follows:

*Light work.* Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

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 light work. Claimant stopped participating in mental health treatment in January 2008. She apparently completed a year long program intended for woman with substance abuse. At the time of the hearing, she was residing in a shelter where, as a condition of residence in the shelter, she participated a weekly life skills program designed for former substance abusers. Claimant performed "volunteer work" from January through December 2008 at [REDACTED]. She reported that she answered the phone and did computer work. The most recent available information from claimant's treating neurologist [REDACTED] on [REDACTED] indicates that claimant's headaches were much improved. After a review of claimant's hospital records, medical reports from her treating physician, and test results, claimant has failed to establish limitations which would compromise her ability to perform a wide range of light work activities on a regular and continuing basis. The record simply fails to support the position that claimant is incapable of light work. Considering that

claimant, at age 50, is closely approaching advanced age, has a high school education and 2 years of business college, has an unskilled work history, and a sustained work capacity for light work, the undersigned finds that claimant's impairments do not prevent her from engaging in other work. See 20 CFR, Part 404, Subpart P, Appendix 2, Table 2, Rule 202.13. Accordingly, the undersigned must find that claimant is not presently 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 this case, there's insufficient medical evidence to support a finding that claimant is incapacitated or unable to work under SSI disability standards for at least 90 days. Therefore, the undersigned finds that claimant is not presently 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 the Department of Human Services properly determined 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 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

cc:

A large black rectangular redaction box covering several lines of text in the distribution list.