

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: 2009-10846

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 26, 2009

Wayne 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 February 26, 2009. Claimant appeared and testified. Claimant was represented by [REDACTED]. Following the hearing, the record was kept open for the receipt of additional medical evidence. Evidence 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 24, 2008, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to March of 2008.

(2) On September 22, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.

(3) On December 11, 2009, a hearing request was filed to protest the department's determination.

(4) Claimant, age 54, has a 9th grade education.

(5) Claimant's last relevant work was performed in February of 2008 as a janitor.

Claimant has also performed work as a home health care provider, a food services worker, and as a machine operator. Claimant's relevant work history consist exclusively of unskilled work activities.

(6) Claimant has a history of alcohol, cocaine, and marijuana abuse.

(7) Claimant was hospitalized [REDACTED] through [REDACTED] of 2008 as a result of psychosis. Her discharge diagnosis was psychotic disorder, NOS and cocaine dependence. Her GAF score at the time of discharge was 45-50.

(8) Claimant currently suffers from a depressive disorder; alcohol, cocaine, and marijuana abuse and dependence; and personality disorder.

(9) Claimant has severe limitations upon her ability to understand, carry out, and remember 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.

(10) 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 bases.

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 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 mental limitations upon her ability to do basic work

activities such as understanding, carry 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).

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.

In this case, claimant has a history of substance abuse and dependence. She was hospitalized in March of 2008 as a result of psychosis. Her discharge diagnosis was psychotic disorder, NOS and cocaine dependence. Her GAF score at the time of discharge was 45-50. On February 2, 2009, claimant's treating psychiatrist at [REDACTED] diagnosed claimant with depressive disorder not otherwise specified; rule out major depression, reoccurrence; alcohol, cocaine, and marijuana abuse and dependence; and personality disorder, not otherwise specified. On February 18, 2009, the treating psychiatrist opined that claimant was markedly limited in

every area of understanding and memory; sustained concentration and persistence, social interaction, and adaption. Based upon the hearing record, the undersigned finds that, although claimant apparently has the physical and intellectual capacity for work, her psychiatric functioning precludes work activity on a regular and continuing bases. Further, the undersigned finds that claimant's impairment has lasted or suspected to last 12 months or more. Accordingly, the undersigned, must find that claimant is presently disabled for purposes of the MA program.

In this matter, claimant has a history of substance abuse and dependence. The burden of proof is upon the department to show "materiality" or that claimant would not be disabled if substance abuse were to terminate. Given the record, this adjudicator cannot project what limitations would remain if claimant's substance abuse were to entirely cease. The record does not support a finding that claimant's mental health limitations would improve such that she would than be capable of substantial gainful activity. As such, the record will not support a finding that claimant's substance abuse is material to her disability. Accordingly, the department's determination in this matter must be REVERSED.

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 program as of March of 2008.

Accordingly, the department is ordered to initiate a review of the June 24, 2008 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 her 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 of 2010.

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

Date Signed: 9/30/09 _____

Date Mailed: 10/1/09 _____

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/at

cc:

