

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.: 2009-12353
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
May 4, 2009
Oakland County DHS (03)

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 May 4, 2009. Claimant appeared and testified. Claimant was represented by his [REDACTED] authorized representative, [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 September 23, 2008, an application was filed on claimant's behalf for MA-P and SDA benefits. The application did not request retroactive medical coverage.
- 2) On December 2, 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 15, 2008, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 39, is a high-school graduate. Claimant received special education services for the Educable Mentally Impaired from grades kindergarten through twelve. IQ testing while in school revealed a full-scale IQ of 60.
- 5) Claimant has had short-lived jobs as a dishwasher and laborer performing yard work. Claimant has had no relevant work experience.
- 6) Claimant suffers from expressive language disorder-mild; cognitive disorder NOS (full-scale IQ of 61); mental retardation with severe deficits in reading, writing, and arithmetic (functional illiteracy) with onset during developmental period and concurrent deficits in adaptive functioning, including work, functional academic skills, and socialization. In [REDACTED], claimant's GAF score was 45.
- 7) Claimant suffers from significantly sub-average general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period. He has a full-scale IQ of 58 to 66 resulting in marked restrictions of activities of daily living and marked difficulties in maintaining concentration, persistence, and pace.

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 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 he has significant mental limitations upon his 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 working 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. After careful consideration of the entire hearing record, the undersigned Administrative Law Judge finds that claimant's impairment meets or equals a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A, Section 12.05D.

Medical evidence has established that claimant has a valid IQ score of 60 to 70. Claimant received special education services for the Educable Mentally Impaired while in school. IQ testing performed back in [REDACTED] revealed a full-scale IQ of 60. Claimant was seen by a consulting psychiatrist for the [REDACTED] on [REDACTED]. The psychiatrist diagnosed claimant with moderate mental retardation, rule out attention deficit disorder adult residual. The consultant psychiatrist wrote as follows:

“Based upon today's examination, the claimant is not able to understand, remember and follow simple instructions is not able to respond appropriately to supervision, co-workers and adapt to changes in the work setting... Claimant CANNOT manage his benefit funds. He has deficits in calculation, concentration, memory and recall.”

Claimant was seen by a consulting psychologist for the department on [REDACTED], and [REDACTED]. [REDACTED]. Following the interview and administration of multiple tests, the consultant found claimant to have a full-scale IQ of 61. He found a reading level which approximated the first-grade level and spelling and arithmetic levels which approximated the second-grade level. The

consultant indicated that claimant's testing amounted to functional illiteracy. The consultant provided the following medical source statement:

“Results which are considered valid, portray a now 38 year old young man with a long standing history of cognitive impairments affecting major areas of reading, writing, and arithmetic, memory, verbal reasoning, non-verbal reasoning, and perceptual motor coordination. It is predicted that he would not be able to successfully and persistently follow, understand or remember instructions, and his abilities to adjust to changes in the work setting and relate appropriately with co-workers and supervisors would be severely impacted. It is further opinioned that his ability for work-related activities, in spite of his impairment, is severely impacted, and that he needs to be involved in activities where he could find some success, commensurate with his degree of problems. Sheltered workshops, Special Olympics, and so-forth should be considered.”

The consultant diagnosed claimant with expressive language disorder-mild; cognitive disorder NOS (possible aspects of fetal alcohol syndrome); mental retardation, full-scale IQ 58 to 66 with 95% confidence and commensurate to worst deficits in reading, writing and arithmetic (functional illiteracy) with onset during developmental period and concurrent deficits in adaptive functioning, including work, functional academic skills, and socialization. The consultant gave claimant a GAF score of 45 and opined that claimant was moderately to markedly limited in every area of understanding and memory, sustained concentration and persistence, social interaction, and adaption. After careful consideration of the entire hearing record, the undersigned finds that claimant's impairment meets or equals a listed impairment. Accordingly, this Administrative Law Judge 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. Inasmuch as claimant has been found “disabled” for purposes of MA, he must also be found “disabled” for purposes of the SDA program.

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 difficulties or other problems which may prevent adequate management or discharge of financial or other personal affairs. See Adult Services Manual, Item 215.

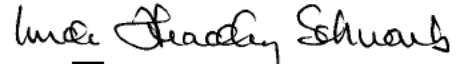
DECISION AND ORDER

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 September of 2008.

Accordingly, the department is ordered to initiate a review of the September 23, 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 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 January of 2012.

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



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

Date Signed: February 10, 2010

Date Mailed: February 16, 2010

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 mailing 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/pf

cc:

