

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Claimant

Reg. No.: 2009-12360

Issue No.: 2009/4031

Case No.:

Load No.:

Hearing Date:

June 24, 2009

Wayne County DHS (18)

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 June 24, 2009. The claimant appeared and testified.

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 July 8, 2008, claimant filed an application for MA-P and SDA benefits. Claimant did not request retroactive medical coverage to November 2007.
- (2) On November 17, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.

- (3) On January 7, 2009, claimant filed a hearing request to protest the department's determination.
- (4) Claimant, age 41, has a high school education.
- (5) Claimant last worked in 2005 as a home health care provider. Claimant has also worked as an inventory clerk, and a line operator. Claimant's relevant work history consists exclusively of unskilled work activity.
- (6) Claimant has a history of poor vision and requires contacts or glasses for adequate vision. She also developed a hearing loss between 1991 and 1995 and is benefited by the use of bilateral hearing aids.
- (7) Claimant lost her bilateral hearing aids in approximately 2000 and lost her last contact lens in approximately December 2008.
- (8) Claimant suffers from moderate bilateral sensory neural hearing loss, poor vision, balance problems, and depressive disorder, NOS.
- (9) Claimant is able to engage in conversational speech without the assistance of her bilateral hearing aids.
- (10) Claimant has severe limitations upon her capacities for seeing and hearing. Claimant's limitations have lasted or are expected to last 12 months or more.
- (11) Claimant is capable of meeting the physical and mental demands associated with her past employment as well as other forms of work which avoid unprotected heights, dangerous moving machinery, and require good hearing.

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, 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 mean 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 limitations upon claimant’s ability to perform basic work activities such as seeing and hearing. 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 has a history of poor vision and hearing loss. Claimant testified that she lost her bilateral aids in approximately 2006 and that she lost her last contact lens in approximately December 2008. Claimant had an audiology evaluation on

September 10, 2008 and was found to have moderate bilateral sensory neural hearing loss. She was seen by a consulting internist for the Disability Determination Service on September 19, 2008. At that point, claimant still had one contact lens in her right eye. Her vision was said to be 20/30 in the right eye and inability to see anything in her left eye due to the loss of her contact lens. The physician found that with both eyes, claimant's vision was 20/30. Claimant was seen by a consulting psychologist for the Disability Determination Service on October 21, 2008. The psychologist diagnosed claimant with major depressive disorder, NOS. A psychologist indicated as follows:

“It is this examiners opinion that this claimant's psychological issues will not significantly interfere with their ability to do work related activities.”

At the hearing, claimant testified that she believes that her vision and hearing are correctable with glasses and hearing aids. She reported that if she could obtain glasses/contacts and hearing aids, she could return to work. It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical findings, as well as claimant's own testimony as to her functioning in her home and the community, that claimant is capable of her past work as a home health care provider and/or inventory clerk. Because of claimant's assertion that she experiences balance problems, which she partially attributes to her poor vision, it must be found that claimant is capable of simple, unskilled work which avoids unprotected heights, dangerous moving machinery, and jobs that require good hearing. Claimant did receive a referral from the department to Michigan Rehabilitative Services for assistance of replacing her lost glasses and hearing aids. The undersigned finds that claimant is capable of her past work and that, further, she is capable of performing other work activities which do not expose her to

unprotected heights, moving machinery, and the like. Accordingly, the undersigned must find that claimant is not “disabled” for purposes of the MA program.

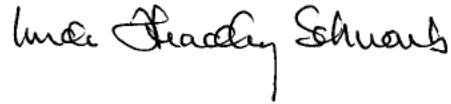
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are 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 is 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 the purposes of the Medical Assistance and State Disability Assistance programs.

Accordingly, the department's decision in this matter is HEREBY, AFFIRMED.



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

Date Signed: 10/21/09

Date Mailed: 10/21/09

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 the Circuit 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:

