

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.: 2009-14769

Issue No.: 2009/4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

May 21, 2009

Wayne County DHS (17)

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 21, 2009. The claimant appeared and testified with the assistance of a translator. Following the hearing, the record was kept open for 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) program benefits?

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 December 2, 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 January 23, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- (3) On February 4, 2009, a hearing request was filed to protest the department's determination.
- (4) Claimant, age 49, has had no formal education. Claimant is unable to read, write, or speak in English. She is unable to read or write in Arabic.
- (5) Claimant last worked part time in 2008 performing cleaning work in a bakery. Claimant has had no other relevant work experience. Claimant's relevant work history consists exclusively of unskilled work activities.
- (6) Claimant suffers from endometriosis and fibroid uterus as well as bipolar disorder. Claimant's GAF score in March 2009 was 35.
- (7) Claimant has severe limitations upon her ability to use judgment, respond appropriately to others, and deal with changes in a routine work setting. Claimant's limitations have lasted for 12 months or more.
- (8) 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 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 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 claimant has significant mental limitations upon claimant’s ability to perform basic work activities such as 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 mental health problems. On [REDACTED], claimant's treating psychiatrist at the [REDACTED] [REDACTED] diagnosed claimant with bipolar disorder, Type I, depressed and narcissistic personality disorder. Claimant was seen by a consulting psychologist for the Disability Determination Service on [REDACTED]. The consultant diagnosed claimant with bipolar disorder, mixed type and gave her a current GAF score of 35. The consultant issued the following statement:

Based on today's exam, claimant presented as a woman who did not speak English and was unable to respond to most questions even through translation, with her brother providing almost all of the information. She appeared to be withdrawn and preoccupied. My impression is that it is difficult for her to function in a reasonable way as to be able to participate in meaningful work-type activities at present.....

Claimant was also seen by a consulting internist for the Disability Determination Service on [REDACTED]. That consultant diagnosed claimant with mental illness. The physician wrote as follows:

Based on the exam, the examinee needs continued ongoing care for her mental health problem and close monitoring and follow-up. She is taking multiple medications for this problem as well. She has underlying tremor and anxiety noted causing difficulty with use of her hands for simple tasks because of the tremors at rest as well as with intention.

On [REDACTED], claimant's treating gynecologist reported that claimant suffers from endometriosis and fibroid uterus for which she will "likely require further surgery to alleviate her symptoms." On [REDACTED], claimant's treating family physician reported that claimant was limited to occasionally lifting up to 10 lbs as well as standing and walking less than 2 hours in an 8 hour work day. The physician noted difficulty with comprehension, memory, reading/writing, and social interaction. Based upon the hearing record, the undersigned finds that, although claimant may have the physical and intellectual capacity for work, her psychiatric functioning currently precludes work activities on a regular and continuing basis. Further, the record supports a finding that claimant's impairment has lasted or is expected to last 12 months or more. Accordingly, the undersigned finds that claimant is presently disabled for purposes of the MA program.

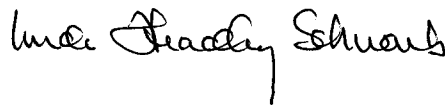
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are 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 as much as claimant has been found "disabled" for purposes of the MA program, she must also be found "disabled" for purposes of SDA benefits.

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 December 2008.

Accordingly, the department is ordered to initiate a review of the December 2, 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 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 December 2010.



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

Date Signed: 1/11/2010

Date Mailed: 1/11/2010

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 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

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