

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.: 2009-16334
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 22, 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 June 22, 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 November 3, 2008, claimant applied for MA-P and SDA benefits. Claimant requested MA-P retroactive to September 2008.

- 2) On January 16, 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 18, 2009, claimant filed a hearing request to protest the department's determination.
- 4) Claimant, age 50, has an associate degree in business.
- 5) Claimant reported that she last worked in 2000 as a cashier, customer services person, and stockperson at [REDACTED]. From 2000-2007, claimant cared for her father who suffered from Alzheimer's disease. Claimant's relevant work history consists exclusively of unskilled work activities.
- 6) Claimant has a history of alcohol and cocaine abuse.
- 7) Claimant currently suffers from alcohol dependence, and reported remission; panic disorder without agoraphobia; major depressive disorder, recurrent, severe; cocaine, and reported remission; mixed personality disorder with dependent and histrionic features.
- 8) Claimant has severe limitations upon her ability to respond appropriately to others and deal with changes in a routine work setting. Claimant also reports having limitations upon her ability to lift heavy amounts of weight and walk for long distances without a cane. Claimant's limitations have lasted or are expected to last 12 months or more.
- 9) 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 simple, unskilled, 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, 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 reports that she 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 she has significant physical and mental limitations upon her ability to perform basic work activities such as walking and standing for prolonged periods of time and lifting heavy objects as well as limitations with 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).

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 her past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings, that claimant is capable of performing her past work as a cashier or customer services representative. But, even if claimant is no longer capable of such work, she is clearly 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 your 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 simple, unskilled, light work activities. 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. On [REDACTED], claimant's treating psychiatrist at the Veterans Administration (VA) diagnosed claimant with alcohol dependence-early remission; alcohol withdrawal; panic disorder without agoraphobia; major depressive disorder, recurrent, severe; and cocaine abuse-remission 3 years. On [REDACTED], the treating psychiatrist diagnosed claimant with major depressive disorder, recurrent, severe; panic disorder without agoraphobia; migraine headaches; chronic back pain; and disc bulge. The psychiatrist indicated that claimant's physical examination was entirely normal. She opined that claimant was capable of occasionally lifting up to 10 lbs as well as capable of standing and walking about 6 hours in an 8 hr work day and sitting about 6 hours in an 8 hour work day. The psychiatrist indicated that claimant had no limitations with regard to repetitive activities of the upper and lower extremities. The only noted mental limitation was with social interaction. The psychiatrist indicated that claimant suffers from:

Chronic depression, social isolation, and alienation. She has panic attacks several times a week. Her mood is labile and she is easily overcome by mild stressors.

On [REDACTED], claimant's treating psychiatrist at the VA diagnosed claimant with alcohol dependence-in remission for 6 months; panic disorder without agoraphobia; major depressive disorder, recurrent, severe; and cocaine abuse-remission 3 years. On [REDACTED], VA records indicated that claimant was reported to have issues of addiction to benzodiazepines and had been to multiple healthcare providers seeking additional medication. On [REDACTED], claimant was reported to the VA as "drinking heavily again and has been abusing her Xanax."

Claimant was seen by a consultant psychologist for the Disability Determination Service on [REDACTED]. The consultant's diagnosis was dysthymic disorder and mixed personality disorder with dependent and historic features. Claimant was given a GAF score of 50. Her prognosis was said to be fair. The consultant indicated that in light of claimant's history of substance abuse, she was not felt to be capable of managing her own benefit funds. It was noted that VA records of [REDACTED] indicate that claimant reported an apparent syncopal episode which "occurred on [REDACTED] while patient was at work." During her testimony, claimant acknowledged that despite having told the Disability Determination Service consulting internist that she had been diagnosed with multiple sclerosis, she had not been definitively diagnosed with MS. In fact, the only mention of MS in claimant's medical records is noted in the records of [REDACTED] when claimant sought VA medical attention for "my legs gave out on me." When asked on that occasion as to what would be the most helpful intervention, claimant stated that "fixing the pain in my legs by giving me vicodin would be most useful." The examining neurologist found no significant neurological deficits and indicated that claimant's "story is inconsistent." The examining VA neurologist raised the possibility that claimant had "some non neurologic overlay." At the hearing, claimant testified that she does her own housework as well as her own laundry, grocery shopping, and cooking. When ask whether there was anything that claimant could not do or needed help with, claimant responded "no." After review of claimant's medical records, reports from claimant's treating healthcare providers, and test results, claimant has failed to establish limitations which would compromise her ability to perform a wide range of simple, unskilled, light work activities on a regular and continuing basis. The record fails to support the position that claimant is incapable of light work activities.

Considering that claimant, at age 50, is closely approaching advanced age, has an associates degree, has an unskilled work history, and has a sustain work capacity for light work, the undersigned finds that claimant's impairments do not prevent her from doing other work. As a guide 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.

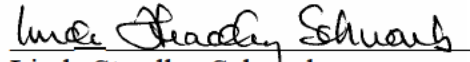
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are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


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

Date Signed: 10/20/09

Date Mailed: 10/23/09

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 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/dj

cc:

