

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.: 2009-16833
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 24, 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 June 24, 2009. Claimant appeared and testified. Claimant was represented by [REDACTED], claimant's fiancé. Following the hearing, the record was kept open for the receipt of additional medical evidence. An additional document was received from the department.

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 October 24, 2008, claimant applied for MA-P and SDA benefits. Claimant did not request retroactive medical coverage.
- 2) On February 17, 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 23, 2009, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 31, has a ninth-grade education.
- 5) Claimant last worked in 2006 as a medical assistant. Claimant has had no other relevant work experience.
- 6) Claimant was hospitalized [REDACTED] as a result of left hip necrotic fasciitis. Claimant underwent several rounds of surgical debridement of the left hip and lumbar back area with wound VAC placement. She was discharged to a rehab facility.
- 7) Claimant was re-hospitalized [REDACTED] as a result of purulent drainage from her open wound of the left hip. Claimant again underwent multiple wound irrigation and VAC placement.
- 8) Claimant has suffered with a chronic draining ulcer in the left hip area as well as scar tissue with extensive tissue and muscle loss of the left hip, buttock, and low back secondary to multiple debridements for necrotic fasciitis. This has resulted in chronic pain with impaired gait and reduced range of motion. Additionally, claimant suffers from depression, panic disorder, major hearing loss (reportedly from massive antibiotic administration), and reported vision loss.

- 9) Following the hearing, the undersigned Administrative Law Judge kept the record open so that claimant might submit a copy of an audiology report. The undersigned Administrative Law Judge also ordered the department to set up and pay for a consulting eye examination and a consulting internist examination.
- 10) Claimant was reportedly a “no show” for the [REDACTED], appointment at [REDACTED].
- 11) Claimant did not submit an audiology report for consideration.
- 12) Claimant has severe limitations upon her ability to walk, stand, and sit as well as limitations upon hearing. Claimant’s limitations have lasted twelve months or more.
- 13) 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 she has significant physical limitations upon her ability to perform basic work activities such as walking, standing, and sitting as well as capacity for 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). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings, that claimant is not capable of the walking or standing required by her past employment as a nurse's assistant. Claimant has presented the required medical data and evidence necessary to support a finding that is not, at this point, capable of performing such 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 you 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). Once claimant reaches Step 5 in the sequential review process, claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that the claimant has the residual functional capacity for substantial gainful activity.

Claimant was hospitalized in [REDACTED] as a result of left hip necrotic fasciitis. She underwent multiple rounds of surgical debridement of the left hip and lumbar back area with wound VAC placement. She remained hospitalized from [REDACTED]. Claimant was re-admitted to the hospital [REDACTED] as a result of purulent drainage from her painful left hip wound. She again underwent multiple wound irrigation and VAC placement. Claimant has continued to suffer with a chronic draining ulcer of the left hip area. On [REDACTED], claimant's treating internist diagnosed claimant with necrotic fasciitis, panic disorder, and hearing loss. The physician indicated that claimant was limited to occasionally lifting less than ten pounds as well as limited to standing and walking less than two hours in an eight-hour work day. The physician indicated that claimant was medically required to use a cane to assist with ambulation. The physician noted that claimant had difficulties with comprehension and memory. Claimant was seen by a consulting internist for the department on [REDACTED]. The consultant noted an ulcer on claimant's left thigh area. The consultant provided a diagnosis as follows:

1. Status post cellulitis with involvement of the muscles by flesh eating bacteria and removal of necrotic tissue and a chronic ulcer which is gradually being healed. There is involvement of both hip joints, which unfortunately do not have any x-rays to evaluate.
2. Scar formation on the back and buttocks which is the reason for pain for this patient.

Claimant was seen by a consulting internist for the department on [REDACTED]. The consultant observed a currently draining sinus in claimant's left hip area which "drains pus." Examination revealed a large scar on the left hip area as well as a scar from the incision on her lower back. The physician noted that the left thigh scar was still draining. This physician provided the following assessment:

“The patient is status post surgery for the fasciitis of the left hip and left buttock as well as lower back with draining sinus in the left hip area.

She has major hearing loss of both ears.

She is also mentally depressed at this time.”

After careful review of claimant’s extensive medical record and the Administrative Law Judge’s personal interaction with claimant at the hearing, this Administrative Law Judge finds that claimant’s exertional and non-exertional impairments render claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P, Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The department has failed to provide vocational evidence which establishes that claimant has the residual functional capacity for substantial gainful activity and that, given claimant’s age, education, and work experience, there are significant numbers of jobs in the national economy which the claimant could perform despite claimant’s limitations. Accordingly, this Administrative Law Judge concludes 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).

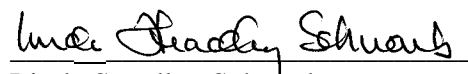
A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon

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, 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 October of 2008.

Accordingly, the department is ordered to initiate a review of the October 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 September of 2010.


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

Date Signed: March 30, 2010

Date Mailed: March 31, 2010

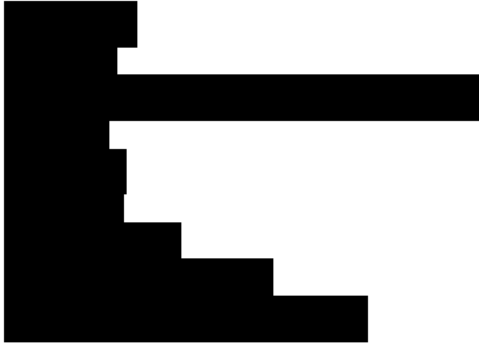
NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department’s motion where the final decision cannot be implemented within 90 days of the filing of the original request.

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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:

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