

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.: 2009-22832
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
July 23, 2009
Macomb County DHS (36)

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 July 23, 2009. The claimant appeared and testified. The claimant was represented by [REDACTED] of [REDACTED].

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) program?

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 10, 2008, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to August 2008.
- (2) On January 14, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.

- (3) On April 9, 2009, a hearing request was filed to protest the department's determination.
- (4) Claimant, age 52, has a high school education. Claimant reportedly received special education services from the 5th – 12th grade. Claimant indicated that she has severe limitations with regard to reading, writing, and mathematics.
- (5) Claimant last worked in approximately 1999 as a fast food preparer. Claimant has also performed relevant work as a deli clerk. Claimant's relevant work history consists exclusively of unskilled work activities.
- (6) Claimant suffers from chronic obstructive pulmonary disease, seizure disorder, degenerative disc disease, adjustment disorder with depressed mood, and cognitive impairment. Claimant has a full scale IQ of 61.
- (7) Claimant has severe limitations upon her ability to walk and stand for long periods of time as well as lifting heavy objects; understanding, carrying out, and remembering simple instructions; use of judgment; responding appropriately to others; and dealing with change. Claimant's limitations have lasted for 12 months or more.

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 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 physical and mental limitations upon claimant’s ability to perform basic work activities such as walking and standing for long periods of time and lifting heavy objects; understanding, carrying out, and remembering simple instructions; use of judgment; responding appropriately to supervision, co-workers, and usual work situations; and dealing with change. 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. Based upon the claimant's diagnosis as stated above, the undersigned 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 12.05C. Medical evidence has established that claimant has a valid IQ score of 60 – 70 and that she has an additional impairment (other than mental retardation) that meets the "severity" standard. The "severity" step in the sequential evaluation analyst is a threshold inquiry which allows only "claims based on the most trivial impairments to be rejected." Claimant's burden of showing severity is *mild*. A claimant "need only show that (he or her) impairment is not so slight and it's effect is not so minimal." *McDaniel v Bowen*, 800 Fed 2nd 1026, 1031(11 CA, 1986). An impairment is not severe if it is a slight abnormality which has such a minimal effect on the individual that it would not be expected to interfere with the individual's ability to work, in respect to age, education, or work experience. *Brady v Heckler*, 724 Fed 2nd 914, 920(11 CA, 1984). In this case, claimant was evaluated by a consulting psychologist on [REDACTED], following testing, she was found to have a full scale IQ of 61. The evaluator indicated that the score appeared consistent with claimant's current level of cognitive ability. The evaluator indicated as follows:

"Claimant does not appear able to manage her own income and is very unstable and disheveled. Her subtest scores are consistent with an individual with a learning disability and also with depression."

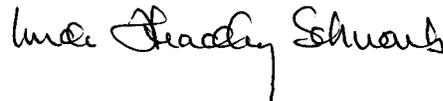
Claimant was also seen by a consulting psychiatrist on [REDACTED]. The consultant diagnosed claimant with a history of alcohol abuse, adjustment disorder with depressed mood, and cognitive impairment. The consultant gave claimant a GAF score of 48 – 50 and indicated that her prognosis was guarded and that she was not able to manage her benefit funds. Additionally, claimant suffers from chronic obstructive pulmonary disease. A pulmonary function test on [REDACTED] documented moderate obstruction and low vital capacity possibly

due to restriction. The medical record clearly indicates that, in addition to intellectual deficits, claimant has a severe impairment which imposes additional and significant work-related limitations of function. Accordingly, the undersigned finds that claimant is “disabled” for purposes of the MA program.

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 program as of August 2008.

Accordingly, the department is ordered to initiate a review of the November 10, 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 December 2010.



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

Date Signed: 10/28/09

Date Mailed: 10/28/09

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

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