

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.: 2009-24583
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
August 5, 2009
Wayne County DHS (49)

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 August 5, 2009. Claimant appeared and testified. Claimant was represented by [REDACTED]. Following the hearing, the record was kept open for the 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) 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 August 5, 2008, claimant filed an application for MA-P and SDA benefits. Claimant requested MA-P retroactive to May of 2008.
- 2) On October 9, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On October 14, 2008, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 49, is a high-school graduate.
- 5) Claimant last worked in July of 2007 as a child care provider. Claimant has also performed relevant work as a secretary and as an assembly line worker.
- 6) On May 16, 2008, a Social Security Administration Administrative Law Judge conducted a hearing with regard to claimant's October 28, 2005, application for Supplemental Security Income and her November 22, 2005, application for a period of disability and disability insurance benefits. At the hearing, upon advice of counsel, claimant requested a closed period of disability from October 28, 2005, through July 2, 2007. On October 28, 2008, the Social Security Administration Administrative Law Judge issued an Order finding claimant "disabled" for purposes of Supplemental Security Income beginning October 28, 2005, and ending July 3, 2007.
- 7) Claimant received emergency room treatment on [REDACTED], for chest pain and hypertensive emergency. Cardiac problems were ruled out.
- 8) Claimant sought emergency room treatment on [REDACTED], and was diagnosed with a transient ischemic attack.

- 9) Claimant sought emergency room treatment on [REDACTED], and was diagnosed with anxiety-panic attack.
- 10) Claimant was hospitalized [REDACTED] at [REDACTED] [REDACTED]. Her discharge diagnosis was major depressive disorder, recurrent.
- 11) Claimant currently suffers from major depressive disorder, generalized anxiety disorder, alcohol dependence, sleep apnea, hyperlipidemia, gastroesophageal reflux disease, hypertension, and impaired fasting blood sugar.
- 12) Claimant has severe limitations with regard to memory, use of judgment, responding appropriately to others, and dealing with changes. Claimant's limitations have lasted or are expected to last 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 has the physical and mental capacity to engage in simple, unskilled 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 is not working. Therefore, claimant may not be disqualified from 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 mental limitations upon her ability to perform basic work activities such as understanding, carrying out, and remembering simple instructions; 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 had a history of problems with depression and anxiety. She was hospitalized at [REDACTED] from [REDACTED] with a discharge diagnosis of major depressive disorder, recurrent. On [REDACTED], claimant's treating psychiatrist at [REDACTED] diagnosed claimant with major depressive

disorder, generalized anxiety disorder, and alcohol dependence. The treating psychiatrist gave claimant a GAF score of 50. He noted that claimant presented as follows:

“... alert, responsive, and attentive. Affect appropriate... Speech was spontaneous, coherent, productive, and logical. No delusions or hallucinations. Mental capacity intact. Good abstract thinking, judgment intact, insight fair... Claimant is currently able to function independently with some assistance.”

The treating psychiatrist opined that claimant had no marked limitations with regard to understanding and memory, sustained concentration and persistence, social interaction, and adaption other than the ability to accept instructions and respond appropriately to criticism from supervisors. On [REDACTED], claimant's ongoing family practitioner diagnosed claimant with impaired fasting blood sugar, sleep apnea, hyperlipidemia, depression, and gastroesophageal reflux disease. The physician found that claimant had no physical limitations and no limitations with regard to repetitive activities with the bilateral upper and lower extremities. The physician did note a limitation with regard to social interaction due to depression and anxiety. At the hearing, claimant reported that the only psychiatric problem she was experiencing at the time of the hearing was difficulty being around large numbers of people. Claimant testified that the current problem she experienced included pain and numbness in her right thigh, difficulty being around large numbers of people, occasional blood in her stool, carpal tunnel syndrome in her right hand, sleep apnea, and a burning sensation on her scalp. Claimant testified that she was able to drive and that she spent an average day reading, watching TV, and occasionally talking on the telephone.

This Administrative Law Judge, after careful consideration of the entire hearing record, finds that claimant is capable of the physical and mental demands required to perform simple, unskilled work. Unskilled work is defined as follows:

Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. For example, we consider job duties unskilled if the primary work duties are handling, feeding, and offbearing (that is, placing over moving materials from machines which are automatic or operated by others), or machine tending, or a person can usually learn to do the job in 30 days and little specific vocational preparation and judgment are needed.

There is insufficient objective medical evidence, signs, and symptoms to support a determination that claimant is incapable of performing simple, unskilled work activities. After review of claimant's medical records, including an evaluation from claimant's treating primary care physician and treating psychiatrist, claimant has failed to establish limitations which would compromise her ability to perform unskilled work activities on a regular and continuing basis. Accordingly, the undersigned finds that the department has properly determined 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).

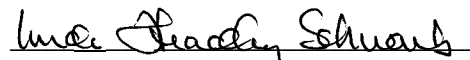
A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness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

Accordingly, the undersigned finds that claimant is not 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: April 13, 2010

Date Mailed: April 14, 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 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:

