

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.: 2009-27515
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
September 2, 2009
Wayne County DHS (73)

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 September 2, 2009. Claimant appeared and testified. 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 February 6, 2009, claimant filed an application for MA-P and SDA benefits. Claimant did not request retroactive medical coverage.
- 2) On May 11, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On May 27, 2009, claimant filed a hearing request to protest the department's determination.
- 4) Claimant, age 40, has a tenth-grade education with a reported history of special education services.
- 5) Claimant last worked in 2006 performing restaurant work as a busboy, dishwasher, and kitchen worker. Claimant's relevant work history consists exclusively of unskilled work activities.
- 6) Claimant has a history of mental health problems with a reported history of multiple hospitalizations as a result of his condition.
- 7) Claimant currently suffers from major depression with psychotic features, polysubstance abuse, and anti-social personality disorder. Claimant's GAF score in [REDACTED] was 45.
- 8) Claimant's psychiatric functioning has prevented or is expected to prevent substantial gainful activity for twelve 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 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 he has significant mental limitations upon his 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 a reported history of special education services while in school. Claimant also reports to having ongoing mental health problems requiring multiple hospitalizations. On [REDACTED], a psychiatric evaluation performed at [REDACTED] [REDACTED] resulted in a diagnosis of major depressive disorder, recurrent; alcohol dependence; cannabis dependence; and anti-social personality disorder. Claimant was given a current GAF score of 42 by his treating psychiatrist. On [REDACTED], claimant's treating psychiatrist continued his diagnosis and again indicated a current GAF score of 42. Claimant was seen by a consulting psychiatrist for the [REDACTED] on [REDACTED]. The consulting psychiatrist diagnosed claimant with major depression with psychotic features and polysubstance abuse. Claimant was given a current GAF score of 45. On [REDACTED], claimant's treating psychiatrist opined that claimant was markedly limited with regard to his ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes. The

treating psychiatrist opined that claimant was moderately limited with regard to his ability to understand and remember detailed instructions; the ability to carry out detailed instructions; the ability to maintain attention and concentration for extended periods; the ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerance; the ability to sustain an ordinary routine without supervision; the ability to work in coordination with or proximity to others without being distracted by them; the ability to complete a normal work day and work week without interruptions from psychologically-based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods; the ability to interact appropriately with the general public; the ability to accept instructions and respond appropriately to criticism from supervisors; the ability to maintain socially-appropriate behavior and to adhere to basic standards of neatness and cleanliness; the ability to respond appropriately to change in the work setting; the ability to travel in unfamiliar places or use public transportation; and the ability to set realistic goals or make plans independently of others. After careful consideration of the entire hearing record, the undersigned finds that, although claimant has the physical and intellectual capacity for work, his psychiatric functioning precludes work activities on a regular and continuing basis. Further, the undersigned finds that claimant's impairments have lasted or are expected to last twelve months or more. Accordingly, this Administrative Law Judge 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 this case, inasmuch as claimant has been found “disabled” for purposes of MA, he must also be found “disabled” for purposes of the SDA program.

The Medical Social Work Consultant (MSWC), in conjunction with the Medical Review Team (MRT), is to consider the appropriateness of directing claimant to participate in appropriate mental health and/or substance abuse treatment as a condition of receipt of benefits. Unless the MSWC determines that claimant has good cause for failure to participate in mandatory treatment, claimant will lose eligibility for MA-P and SDA benefits. See BEM Item 260, p. 5 and BEM Item 261, pp. 3 and 4.

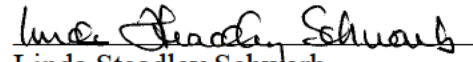
DECISION AND ORDER

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 February of 2009.

Accordingly, the department is ordered to initiate a review of the February 6, 2009, 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 April of 2011.

The Medical Social Work Consultant, in conjunction with the Medical Review Team, is to consider the appropriateness of ordering claimant to participate in mandatory mental health and/or substance abuse treatment as a condition of receipt of benefits.


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

Date Signed: March 2, 2010

Date Mailed: March 9, 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:

