

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: 2009-3241

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 21, 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 January 21, 2009. Claimant was represented by her authorized representative [REDACTED]

[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) 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 July 30, 2008, an application was filed on claimant's behalf for MA-P benefits. The application did not request retroactive medical coverage.

(2) On September 10, 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 21, 2008, a hearing request was filed to protest the department's determination.

(4) Claimant, age 46, has a high school education.

(5) Claimant has a history of neurosarcoidosis diagnosed in 1999 as well as left eye glaucoma and hypertension.

(6) Claimant was hospitalized [REDACTED] through [REDACTED] following altered mental status. She was found to have communicating hydrocephalus and increased intracranial pressure secondary to sarcoidosis. She was placed in [REDACTED] and a lumbar drain was placed.

(7) Thereafter, claimant was placed in the [REDACTED] from [REDACTED] through [REDACTED] of 2008. At discharge she was continuing to experience intermittent confusion, weakness, headaches, light-headedness, and an unstable gait requiring ambulation with a rolling walker.

(8) Claimant received emergency room treatment on January 2, 2009 as the result of new onset seizures and neurosarcoidosis.

(9) Claimant was hospitalized [REDACTED]^h through [REDACTED] with a final diagnosis of neurosarcodosis, psychosis, and seizures.

(10) Claimant was placed in the [REDACTED] on [REDACTED] where she resides at present.

(11) Claimant currently suffers from neurosarcodosis, chronic encephalopathy secondary to neurosarcodosis, hypertension, seizures, and intermittent psychosis.

(12) Claimant has severe limitations upon her ability to walk, stand, lift, push, pull, reach, carry, or handle; capacities for seeing; understanding, carrying out, and remembering simply instructions; use of judgment; responding appropriately to others; and dealing with changes in a routine work setting. Claimant's limitations have lasted or are expected to last 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 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 claimant has significant physical and mental limitations upon claimant’s ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching carrying, or handling; capacities for seeing; 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 your 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 is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Based upon the hearing record, the undersigned finds that claimant’s impairments meet or equal a listed impairment. See Appendix 1 the Subpart P of 20 CFR, Part 404, Part A, Section 12.02. Claimant suffers from neurosarcoidosis, chronic encephalopathy secondary to neurosarcoidosis, hypertension, seizures, and intermittent psychosis. Claimant is unable to ambulate without the assistance of a rolling walker and is unable to handle basic activities of daily living. Claimant is required to reside in a nursing home with 24 hour care. It is the finding of this Administrative Law Judge that claimant meets or equals the listing. Accordingly, the undersigned finds that claimant is presently 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 July of 2008.

Accordingly, the department is ordered to initiate a review of the July 30, 2008 application, if it is 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 May of 2010.

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

Date Signed: 7/14/09 _____

Date Mailed: 7/15/09 _____

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 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.

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