

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.: 2009-33458
Issue No.: 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
October 26, 2009
Macomb County DHS (12)

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 October 26, 2009. Claimant appeared and testified.

ISSUE

Did the Department of Human Services (DHS or department) properly determine that claimant is not "disabled" for purposes of the State Disability Assistance (SDA) 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 February 26, 2009, claimant applied for SDA benefits.
- 2) On May 9, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.

- 3) On June 24, 2009, claimant filed a hearing request to protest the department's determination.
- 4) Claimant, age 31, has an associate's degree in child day care management.
- 5) Claimant last worked in 2006 as a cashier. Claimant has also performed relevant work as a receptionist and a file clerk. Claimant's relevant work history consists exclusively of unskilled work activities.
- 6) Claimant has a history of polycystic ovarian syndrome.
- 7) Claimant is a recipient of the Adult Medical Program and has access to doctor visits and prescriptions.
- 8) Claimant suffers from bipolar disorder I and morbid obesity.
- 9) Claimant has severe limitations upon her ability to walk or stand for long periods of time and lift extremely heavy objects, as well as limitations with regard to judgment, responding appropriately to others, and dealing with changes in a routine work setting. Claimant's limitations have lasted for twelve months or more.
- 10) Claimant is capable of meeting the physical and mental demands associated with her past work as well as other forms of simple, unskilled, light work activities on a regular and continuing basis.

CONCLUSIONS OF LAW

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 Supplemental Security Income (SSI) standards for at least ninety days. Other than the more limited ninety-day duration, the department must use the same operative definition for “disabled” when considering eligibility for SDA as used for SSI under Title XVI of the Social Security Act. 42 CFR 435.540(a). Disability for SSI is defined as follows:

“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 for SDA at this step in the sequential evaluation process.

Secondly, in order to be considered disabled for purposes of SDA, 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 her ability to perform basic work activities such as walking and standing for long periods of time and lifting extremely heavy objects; use of judgment; responding appropriately to supervision, co-workers, unusual 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).

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 her from doing her past relevant work.

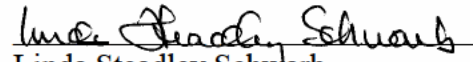
20 CFR 416.920(e). In this case, claimant has performed relevant work as a cashier, receptionist, and file clerk. Per claimant's testimony, she has been in treatment for bipolar disorder for the last six years. Claimant was seen by a consulting psychologist for the [REDACTED]. [REDACTED]. The consultant diagnosed claimant with bipolar I disorder and immature and dependent features. The consultant gave claimant a current GAF score of 60 and indicated that she had a good prognosis with continued medication compliance and therapy. Claimant was also seen by a consulting internist for the [REDACTED]. [REDACTED]. Following examination, the consulting internist provided an impression of lower back pain by history and morbid obesity. The internist found claimant to be "fully independent in terms of her self-care and activities of daily living including her driving." At the hearing, claimant testified that her only significant problem was with bipolar disorder. Claimant reported that she gets along well with friends, family, and her roommate. She is self-sufficient in her activities of daily living. Claimant testified that she spends most of her day reading novels. She reported that she socializes with friends and family and talks to her mother and sister on the telephone. For fun, claimant reported that she reads and "hangs out with her friends." When asked if she needed any assistance, claimant reported that she needs help with transportation and funding, specifically help with budgeting. On [REDACTED], claimant's treating primary care provider reported that claimant suffers from bipolar disorder I and polycystic ovarian syndrome as well as obesity. The physician indicated that claimant was limited to occasionally lifting less than ten pounds and standing and walking less than two hours in an eight-hour work day. The physician noted that claimant has no limitation upon her ability to engage in repetitive activities with the upper and lower extremities. The physician's opinion as to claimant's limitation with regard to standing and walking as well as ability to lift or carry is not supported by acceptable

medical evidence consisting of clinical signs, symptoms, laboratory or test findings, or evaluative techniques and is not consistent with other substantial evidence in the record.

Claimant's physician did not present sufficient medical evidence to support his/her opinion. The evidence presented fails to support the position that claimant is incapable of a full range of light work activities. In an undated and unsigned document, claimant's treating psychotherapist offered an opinion that maintaining employment would be impossible for claimant. Aside from the obvious problems with the document as to lack of signature and date, the psychotherapist, who is an MA, is not considered to be an acceptable medical source for purposes of establishing a medically determinable impairment. The psychotherapist is not an MD, DO, or licensed or certified psychologist. See 20 CFR 416.913. Hence, the opinion of claimant's psychotherapist is not controlling. It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychiatric findings, as well as claimant's own testimony as to her ability to function in her home and the community, that claimant is capable of her past work activities. Accordingly, claimant cannot be found to be disabled for purposes of the SDA program. Further, the record supports a finding that claimant is capable of performing simple, unskilled, light work activities on a regular and continuing basis. As a guide, see Appendix 1 of Subpart P of 20 CFR, Part 404, Table 2, Rule 202.20. Accordingly, the department's determination in this matter must be affirmed.

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 State Disability Assistance Program. Accordingly, the department’s decision in this matter is hereby affirmed.


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

Date Signed: February 2, 2010

Date Mailed: February 3, 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:

