

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.: 2009-4262
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 19, 2009
Macomb 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 March 19, 2009. The 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) 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 August 20, 2008, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to July of 2008.

- 2) On October 8, 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 23, 2008, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 23, has a ninth grade education. Claimant reportedly received special education services.
- 5) Claimant last worked in July of 2008 as a waitress. She has also performed relevant work as a restaurant hostess and as a cashier at a gas station. Claimant's relevant work history consists exclusively of unskilled work activities.
- 6) Claimant has a history of substance abuse, hepatitis C, and bipolar disorder. She was reportedly diagnosed with community-acquired MRSA.
- 7) Claimant was hospitalized [REDACTED]. She was brought to the hospital unable to walk. She was found to have paraparesis with difficulty lifting her legs off the bed. An MRI scan was consistent with an extensive thoracic epidural abscess. On [REDACTED], a six-level thoracic laminectomy was performed. Claimant developed a neurogenic bladder. Her final pathology demonstrated evidence of acute osteomyelitis. She was started on IV antibiotics with a plan to continue treatment for approximately eight weeks.
- 8) Claimant currently suffers with poly substance abuse, in reported remission; bipolar disorder; status post thoracic spinal surgery; and severe difficulties with ambulation requiring the use of a cane or other assistive device.

- 9) Claimant has severe limitations upon her ability to walk, stand, lift, push, pull, reach, carry or handle. Claimant's limitations have lasted or are expected to last twelve months or more.
- 10) 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 is so impaired as to be incapable of engaging in any substantial gainful activity 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 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 her ability to perform basic work activities such as walking, standing, lifting, pushing, pulling, reaching, carrying or handling; use of judgment; responding appropriately to others; 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 claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings, that claimant is not capable of the walking, standing, lifting, carrying, or handling required by her past employment. Claimant has

presented the required medical data in evidence necessary to support a determination that claimant is not, at this point, capable of performing such work.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work.

20 CFR 416.920(f). This determination is based upon the claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once claimant reaches Step 5 in the sequential review process, claimant has already established a *prima facie* case of disability.

Richardson v Secretary of Health and Human Services, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that the claimant has the residual functional capacity for substantial gainful activity.

In this case, claimant has a history of bipolar disorder, substance abuse, and hepatitis C. Claimant was diagnosed with community-acquired MRSA. She was hospitalized [REDACTED] [REDACTED] when she was unable to walk. She was found to have paraparesis with difficulty lifting her legs off the bed. An MRI was found to be consistent with extensive thoracic epidural abscess. On [REDACTED] claimant underwent a six-level thoracic laminectomy. Initially she had urinary retention and required a Foley catheter which was eventually removed. Claimant's final pathology indicated evidence of acute osteomyelitis. Claimant had begun IV antibiotics with a plan to continue treatment for approximately eight

weeks. As claimant recovered, she continued to have problems with her lower extremities, in particular her left leg. She has required the use of a walker and/or cane for ambulation.

Claimant was seen by a neurosurgeon on [REDACTED], who noted that claimant continued to have numbness around her knees and required the use of a cane. The coordination of claimant's lower limbs was noted to remain impaired. At that point, the physician indicated as follows:

“My impression is that this patient has done well considering that she was not ambulatory when she presented to the hospital. She has residual deficits, which may never fully resolve. Currently, her restrictions are no lifting greater than 10 pounds.”

On January 30, 2009, claimant was seen by a consulting psychiatrist for the Disabilities Determination Service. The psychiatrist diagnosed her with bipolar disorder, depressed; poly substance abuse, in early remission; rule out attention deficit disorder; and rule out borderline personality disorder. The consulting psychiatrist gave claimant a current GAF score of 48. He noted as follows:

“The patient has a history of symptoms of depression, irritability, mood swings, and has not been sleeping well since these symptoms escalated because of her physical problems and because she cannot get her psychotropic medications, and these symptoms and her borderline personality traits can cause problems at work.”

Claimant was seen by a consulting internist for the Disability Determination Service on the same day. The internist provided an impression of history of recurrent MRSA with sepsis, epidural abscess of the thoracic spine, multi-level laminectomy in [REDACTED]; and hepatitis C by history. The consultant stated as follows:

“Based upon today's examination, this claimant has severe medical impairments in standing, walking, sitting, climbing stairs, using her upper extremities for grasping, gripping and lifting which may affect functional capacity very severely for occupational activities.”

Claimant was seen by a consulting psychologist for the department on [REDACTED]. The consultant diagnosed her with poly substance abuse in remission two years and bipolar disorder by history. The consultant found that claimant was moderately limited with regard to her ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness. On the same day, claimant was seen by a consulting physiatrist for the department. The consultant provided an impression with status post thoracic spine surgery for infection resulting in paraparesis and neurogenic bladder, recovering. The consultant stated as follows:

“Based upon today’s examination, I feel that the claimant would be unable to work. There is limitation in walking. There is limitation in carrying, pushing and pulling. Grip strength is not limited in the hands. There is limitation in climbing stairs, climbing ropes, ladders or scaffolding.”

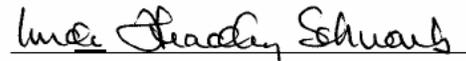
The consultant opined that claimant is limited to occasionally lifting less than ten pounds and opined that claimant did temporarily require the use of an assistive device for ambulation.

After careful review of claimant’s extensive medical record and the Administrative Law Judge’s personal interaction with claimant at the hearing, this Administrative Law Judge finds that claimant’s exertional and non-exertional impairments render claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The department has failed to provide vocational evidence which establishes that claimant has the residual functional capacity for substantial gainful activity and that, given claimant’s age, education, and work experience, there are significant numbers of jobs in the national economy which the claimant could perform despite claimant’s limitations. Accordingly, this Administrative Law Judge concludes 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 July of 2008.

Accordingly, the department is ordered to initiate a review of the August 20, 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 January of 2010.


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

Date Signed: January 12, 2010

Date Mailed: January 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:

