

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: 2009-692

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 4, 2008

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 December 4, 2008. Claimant appeared and testified. Claimant was represented by [REDACTED]. Following the hearing, the record was extended 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 November 27, 2007, claimant filed an application for MA-P and SDA benefits. Claimant requested MA-P retroactive to August 2007.

(2) On August 22, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.

(3) On September 16, 2008, claimant filed a hearing request to protest the department's determination.

(4) Claimant, age 36, has a high school education.

(5) Claimant's last relevant work experience occurred in January of 2007 when she worked as a caretaker for dementia patients. Claimant has also performed relevant work as a stock person in a grocery store and in retail sales. Claimant's relevant work history consist exclusively of unskilled work activities.

(6) Claimant has a history of thyroid dysfunction.

(7) Claimant was hospitalized [REDACTED] as a result of suicidal ideation. She was diagnosed with panic disorder without agoraphobia; major depressive disorder, single episode, severe; and rule out panic disorder secondary to medical problems. Claimant's GAF score was said to be 25.

(8) Claimant was hospitalized [REDACTED] as a result of profound depression. Her discharged diagnosis was bipolar I disorder, mixed, with active suicidal feelings. Her GAF score upon discharge was 40.

(9) Claimant was hospitalized [REDACTED] as a result of panic and depression. She was diagnosed with mood disorder due to thyroid disorder, currently hyperthyroid. Her GAF score was said to be 45.

(10) Claimant suffers from Hashimoto's thyroiditis; major depressive disorder, recurrent; mitro valve prolapse; and tobacco abuse.

(11) Claimant has severe limitations upon her ability to respond appropriately to others and deal with changes in a routine work setting. Claimant's limitations have lasted for 12 months or more.

(12) 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 she has significant physical limitations upon her ability to perform basic work activities such as responding appropriately to supervision, co-workers, and usual work situations as well as 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 personal interaction and response to changes in a work setting as required by her past employment. Claimant has presented the required medical data and evidence necessary to support a finding that she 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 matter, claimant has a history of significant thyroid dysfunction. She has had numerous hospitalizations as a result of depression and or anxiety, reportedly related to her thyroid dysfunction. On [REDACTED], claimant's treating psychiatrist [REDACTED] diagnosed

claimant with major depressive disorder. The treating psychiatrist opined that claimant was markedly limited with regard to her ability to understand and remember detailed instructions; the ability to maintain attention and concentration for extended periods; and the ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; and the ability to respond appropriately to changes in the work setting. The treating psychiatrist found claimant to be moderate limited with regard to her ability to remember locations and work-like procedures; the ability to carry out detailed instructions; 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 accept instructions and respond appropriately to criticism from supervisors; the ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes; and the ability to set realistic goals or make plans independently of others. On [REDACTED], claimant's primary care physician diagnosed claimant with Hashimoto's thyroiditis; depression; anxiety; mitral valve prolapse; and tobacco abuse. On [REDACTED] claimant's treating psychiatrist [REDACTED] diagnosed claimant with major depression and anxiety/panic disorder. The physician continued to find that claimant was markedly to moderately limited in most areas of understanding and memory, sustain concentration and persistent, social interaction, and adaption. On [REDACTED], the treating psychiatrist again diagnosed claimant with major depressive disorder, recurrent and anxiety/panic disorder. The psychiatrist wrote as follows: "At this time, [REDACTED] mood and anxiety symptoms, which include depression, anxiety, panic attacks,

agoraphobia, interpersonal difficulties, interfere with her daily functioning and prevent her from being able to work.”

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.

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. Inasmuch as claimant has been found “disabled” for purposes of MA, she must also be found “disabled” for purposes of SDA benefits.

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 August of 2007.

Accordingly, the department is ORDERED to initiate a review of the November 27, 2007 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 2010.

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

Date Signed: 03/31/09

Date Mailed: 04/01/09

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.

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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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