

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: 2009-10383

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 15, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 April 15, 2009. Claimant appeared and testified.

ISSUES

(1) Did the Department of Human Services properly determine that Claimant is not disabled and deny Claimant's application for Medical Assistance (MA) based on disability?

(2) Did the Department of Human Services properly determine that Claimant is not disabled and deny Claimant's application for State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) Claimant is a 54 year-old female. Claimant is 66 inches tall and weighs approximately 250 pounds. Claimant's formal education consists of 12 years of school.

(2) Claimant has past relevant work as a care provider doing household chores, in janitorial work, and in cosmetology.

(3) Claimant last worked December of 2008 as a care provider. Claimant reports she left that employment because she was let go by the employer.

(4) On April 21, 2008, Claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).

(5) On August 8, 2008, the Department of Human Services Medical Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) or State Disability Assistance (SDA).

On September 5, 2008, Claimant was sent notice of the Department's determination.

(7) On December 3, 2008, Claimant submitted a request for hearing.

(8) On February 3, 2009, the Department of Human Services State Hearing Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) or State Disability Assistance (SDA).

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).

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).

Disability determinations done by the State of Michigan for Medical Assistance (MA) based on disability use the Social Security Administration standards found in United States Code of Federal Regulations (CFR) at Title 20, Part 416. The law defines disability as 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 at least 12 months. To meet this definition, you must have severe impairments that make you unable to do your past relevant work or any other substantial gainful work that exists in the national economy.

Disability determinations done by the State of Michigan, for State Disability Assistance (SDA), use the same standards with one minor difference. For State Disability Assistance (SDA) the medically determinable physical or mental impairments that prevent substantial gainful activity must result in death or last at least 90 days.

In accordance, with the Federal Regulations an initial disability determination is a sequential evaluation process. The evaluation consists of five steps that are followed in a set order.

STEP 1

At this step, a determination is made on whether Claimant's is engaging in substantial gainful activity (20 CFR 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. Substantial work activity is work activity that involves doing significant physical or mental activities. Gainful work activity is work activity

that you do for pay or profit (20 CFR 416.972). If you are engaged in SGA, you are not disabled regardless of how severe your physical or mental impairments are and regardless of your age, education, and work experience.

Claimant testified that she lives with her daughter and spends her days resting and trying to stay off her feet to prevent swelling of her feet, ankles, and legs. Claimant is/is not engaged in substantial gainful activity because she is not getting pay or profit for her activities.

STEP 2

At the second step, it is determined whether you have a medically determined impairment that is severe or a combination of impairments that is severe (20CFR 416.920(c)). An impairment or combination of impairments is severe within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is not severe when medical and other evidence establishes only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 416.921). In addition, to the limiting effect of the impairments they must also meet durational requirements, 90 days for State Disability Assistance (SDA) and 12 months for Medical Assistance (MA) based on disability. If your medically determinable impairments are not severe you are not disabled.

Claimant asserts disability based upon edema, high blood pressure, diabetes, and depression. Relevant evidence in the record from medical sources is summarized below.

On [REDACTED], a Psychiatric/Psychological Examination Report (form DHS-49D) was signed by [REDACTED] of [REDACTED]. [REDACTED] (pages 15-18). The form was not filled in but two pages from Claimant's file were attached to the form. One was a narrative evaluation and mental status examination dated [REDACTED].

That page shows that Claimant was not psychotic, had a shallow affect, anxious and sad mood, and was not suicidal. It also shows that Claimant was alert, oriented, had an intact memory, and adequate judgment. The only negative comment was that Claimant's insight was limited. The second page is a medication review dated April 22, 2008. It states "Patient admits to sleeping and eating fair . . . Patient still admits to hearing voices, feeling paranoid with persecutory ideations and feeling depressed but all the symptoms improving."

On [REDACTED], Claimant was evaluated by [REDACTED], a psychiatrist at Unified Medical Management, LLC (pages 4-7). Claimant was diagnosed with Dysthymic Disorder and Post-traumatic Stress Disorder. Major Depressive Disorder was ruled out. [REDACTED] noted that Claimant has low self esteem, occasionally hears people calling her name, feels people are after her or talking about her, feels helpless at times, has mood swings at times, gets panics attacks at times, and sleeps better with medication. The Doctor also found Claimant has contact with reality and that her mental capacity is normal. These conditions do not constitute any mental limitations to basic work activities.

On [REDACTED], [REDACTED] filled out a Medical Examination Report (form DHS-49) for Claimant (pages 8 & 9). The Doctor marked that Claimant has no physical or mental limitations. The Doctor noted he first saw Claimant on [REDACTED]. On the Medical-Social Questionnaire (DHS-49-F) Claimant listed [REDACTED] as her health care provider for her high blood pressure, diabetes, and edema.

CFR 416.921 defines a non-severe impairment. An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities. When we talk about basic work activities, we mean 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.

In this case, Claimant's treating physician has not determined any physical or mental limitations. The most recent mental status examination indicates no mental limitations to basic work activities. Claimant's impairments, singularly or in combination, are non-severe because they do not limit her ability to do basic work activities.

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. The assessment of Claimant's disability assertion will continue on through all required steps.

STEP 3

At the third step, it is determined whether your impairments meet or equal the criteria of an impairment listed in a Social Security Administration impairment listing 20 CFR Part 404, Subpart P, Appendix 1. If your impairment meets or equals the criteria of a listing and meets the duration requirement, you are disabled.

Claimant's impairments were compared with any applicable Social Security Administration impairment listings. The comparisons are listed below.

9.08 Diabetes mellitus. With:

- A. Neuropathy demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C); or
- B. Acidosis occurring at least on the average of once every 2 months documented by appropriate blood chemical tests (pH or PCO₂ or bicarbonate levels); or
- C. Retinitis proliferans; evaluate the visual impairment under the criteria in 2.02, 2.03, or 2.04.

Claimant's diabetes does not meet or equal this listing because Claimant does not have the listed conditions.

12.04 Affective Disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders are met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

- 1. Depressive syndrome characterized by at least four of the following:
 - a. Anhedonia or pervasive loss of interest in almost all activities; or
 - b. Appetite disturbance with change in weight; or
 - c. Sleep disturbance; or
 - d. Psychomotor agitation or retardation; or
 - e. Decreased energy; or
 - f. Feelings of guilt or worthlessness; or

- g. Difficulty concentrating or thinking; or
- h. Thoughts of suicide; or
- i. Hallucinations, delusions, or paranoid thinking; or

AND

B. Resulting in at least two of the following:

- 1. Marked restriction of activities of daily living; or
- 2. Marked difficulties in maintaining social functioning; or
- 3. Marked difficulties in maintaining concentration, persistence, or pace; or
- 4. Repeated episodes of decompensation, each of extended duration;

OR

C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

- 1. Repeated episodes of decompensation, each of extended duration; or
- 2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
- 3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Claimant's medically determined mental condition does not meet or equal these listings.

STEP 4

At the fourth step, we assess your residual functional capacity (RFC) to determine if you are still able to perform work you have done in the past. Your RFC is your ability to do physical and mental work activities on a sustained basis despite limitations from your impairments. Your

RFC is assessed using all the relevant evidence in the record. If you can still do your past relevant work you are not disabled under these standards.

Claimant reports past relevant work as a care provider doing household chores, in janitorial work, and in cosmetology. At this hearing Claimant specifically testified that she feels she could work as a care provider but she was let go from that work.

On [REDACTED], [REDACTED] filled out a Medical Examination Report (form DHS-49) for Claimant (pages 8 & 9). The Doctor marked that Claimant has no physical or mental limitations. The Doctor noted he first saw Claimant on [REDACTED]. On the Medical-Social Questionnaire (DHS-49-F) Claimant listed [REDACTED] as her health care provider for her high blood pressure, diabetes, and edema.

On [REDACTED], Claimant was evaluated by [REDACTED], a psychiatrist at [REDACTED] [REDACTED] (pages 4-7). Claimant was diagnosed with Dysthymic Disorder and Post-traumatic Stress Disorder. Major Depressive Disorder was ruled out. [REDACTED] noted that Claimant has low self esteem, occasionally hears people calling her name, feels people are after her or talking about her, feels helpless at times, has mood swings at times, gets panics attacks at times, and sleeps better with medication. The Doctor also found Claimant has contact with reality and that her mental capacity is normal. These conditions do not constitute any mental limitations to basic work activities.

Claimant has the residual functional capacity to perform sedentary, light, medium, and heavy work. Claimant's past relevant work as a care provider doing household chores, in janitorial work, and in cosmetology are within Claimant's residual functional capacity. Claimant is not disabled because she is capable of performing all of her past relevant work.

STEP 5

At the fifth step, your residual functional capacity (RFC) is considered along with your age, education, and work experience to see if you can make an adjustment to other work you have not previously done. If you have a combination of sufficient remaining abilities and transferable skills to adjust to other work, you are not disabled. If it is determined that you cannot make an adjustment to other work, we will find that you are disabled.

Claimant is 54 years old, is a High School graduate, and has a history of unskilled work. Claimant has the residual functional capacity to perform sedentary, light, medium, and heavy work. In accordance with Social Security Administration Medical-Vocational rule 204.00 Claimant can adjust to a wide range of other work and is not disabled.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly determined that Claimant is not disabled and denied Claimant's application for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).

It is ORDERED that the actions of the Department of Human Services, in this matter, are UPHeld.

/s/

Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 21, 2009

Date Mailed: September 23, 2009

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.

GFH [REDACTED]

cc:

[REDACTED]