

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████,

Claimant

Reg. No.: 2009-11521

2009-19406

Issue No.: 2009, 4031

Case No.: ██████████

Load No.: ██████████

Hearing Date:

May 7, 2009

Wayne County DHS (18)

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 May 7, 2009. Claimant appeared and testified. 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) 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 July 25, 2008, claimant applied for MA-P and SDA benefits. Claimant requested MA-P retroactive to April of 2008.
- 2) On December 1, 2008, the department approved SDA benefits but denied MA-P benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On December 29, 2008, claimant filed a hearing request to protest the denial of her application for MA-P benefits.
- 4) On February 3, 2009, the department notified claimant that it intended to terminate her ongoing SDA benefits effective February 18, 2009, based upon the belief that claimant no longer met the requisite disability criteria.
- 5) On February 10, 2009, claimant filed a timely hearing request to protest the department's proposed negative action.
- 6) Thereafter, the department deleted its proposed negative action regarding the SDA program pending the outcome of the instant hearing.
- 7) Claimant, age 51, has a high-school education.
- 8) Claimant last worked in March of 2008 as an adult home health care provider. Claimant has also performed relevant work as a salesperson at [REDACTED]. Claimant's relevant work history consists exclusively of unskilled work activities.
- 9) Claimant has a history of anxiety, hypertension, alcohol abuse, and psychiatric hospitalization.
- 10) Claimant was hospitalized [REDACTED] following a left ankle fracture. She was found to have a displaced intra-articular fracture, trimalleolar type, with intra-articular fragmentation and pilon involvement, left distal tibia and

fibula at ankle with gross hemarthrosis and ruptured ligaments medial and lateral. Claimant underwent open reduction and internal fixation with surgical repair of the medial and lateral ligaments. Claimant's discharge diagnosis was trimalleolar fracture, left ankle; acute renal failure; acute alcohol intoxication; chronic alcoholism; alcoholic liver disease; alcoholic cardiomyopathy; pneumonia; and encephalopathy.

- 11) Claimant was re-hospitalized [REDACTED] as a result of mental status changes secondary to alcohol intoxication and incomplete union of the left tibia and fibula fracture. Claimant was re-cast. Her discharge diagnosis was mental status changes secondary to alcohol intoxication; delirium tremens secondary to alcohol abuse history; newly diagnosed diabetes; dehydration; uncontrolled hypertension; hypomagnesemia; cardiomyopathy; and left ankle fracture.
- 12) Claimant received emergency room treatment on [REDACTED], as a result of left knee injury secondary to a fall.
- 13) Claimant currently suffers from panic disorder with agoraphobia; dysthymic disorder; alcohol abuse, reportedly in remission; and traumatic arthritis of the left ankle.
- 14) Claimant has severe limitations upon her ability to walk, stand, lift, carry, and handle as well as limitations with regard to understand, carry out, remember simple instructions; use of judgment; respond appropriately to others; and deal with changes in a routine work setting. Claimant's limitations have lasted or are expected to last twelve months or more.

- 15) 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 and mental limitations upon her ability to perform basic work activities such as walking, standing, lifting, pushing, pulling, reaching, carrying, or handling; understanding, carrying out, remembering simple instructions; use of judgment; responding appropriately to supervision, co-workers, and usual 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 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 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 case, claimant has a history of anxiety, multiple psychiatric hospitalizations, alcohol abuse, and hypertension. Claimant sustained a severe fracture of her left ankle in [REDACTED] that required open reduction and internal fixation. She was re-hospitalized in [REDACTED] as a result of mental status changes secondary to alcohol abuse. An x-ray of the left ankle revealed non-union and claimant was re-cast. Claimant had an emergency room visit secondary to left knee injury as a result of a fall in [REDACTED]. Claimant was seen by a [REDACTED] consulting psychiatrist on [REDACTED]. The consultant diagnosed claimant with panic disorder with agoraphobia, dysthymic disorder, and alcohol abuse. Claimant was seen by a consulting

physiatrist for the department on [REDACTED]. The consultant found positive musculoskeletal findings of the left lower extremity with weakness of extension of the left knee and moderate atrophy of the left thigh muscles. Claimant was found to have a barely perceptible posterior tibial pulse on the left ankle and some weakness of the dorsalis pedis pulse. Range of motion of claimant's left ankle was said to be moderately to markedly diminished because of tenderness and swelling. An x-ray of the left ankle revealed deformity of the left distal tibia compatible with previous surgical intervention. Moderate deformity of the left ankle was observed. The consultant diagnosed status-post fracture of the left distal tibia and fibular, surgically treated; prolonged immobilization of the cast of the left ankle and leg; and severe pain in the left ankle because of the deformity and arthritis of her left ankle. The specialist indicated that claimant can expect some degree of pain and stiffness in the left ankle on a permanent basis. He found that claimant's condition was expected to significantly limit her ability to stand and walk. The consultant opined that claimant was incapable of lifting any amount of weight and limited to standing and walking less than two hours in an eight-hour work day. The consultant found that claimant was incapable of pushing/pulling with the bilateral upper extremities.

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).

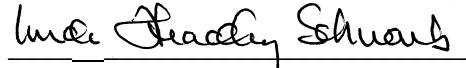
A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (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 continue to 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 April of 2008.

Accordingly, the department is ordered to initiate a review of the July 25, 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 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 August of 2010.


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

Date Signed: February 3, 2010

Date Mailed: February 5, 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:

