

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.: 2009-12876  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
March 30, 2009  
Oakland County DHS (02)

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 30, 2009. 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 November 21, 2008, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to September of 2008.

- 2) On December 12, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On December 29, 2008, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 42, has a high-school education.
- 5) Claimant last worked in approximately April of 2005 as a cook. Claimant has also performed relevant work experience as a machine operator. Claimant's relevant work history consists exclusively of unskilled work activities.
- 6) Claimant has a history of gout and alcohol abuse.
- 7) Claimant was hospitalized [REDACTED]. His discharge diagnosis was duodenal narrowing secondary to duodenal hematoma; alcoholism; delirium tremors; left lower lobe pneumonia, improved; gastrointestinal bleeding; and electrolyte imbalance, improved. Claimant has had no other hospitalizations.
- 8) Claimant currently suffers from major depression, recurrent and alcohol dependence, early full remission.
- 9) Claimant has severe limitations upon his ability to respond appropriately to others and deal with changes in a work setting. Claimant's limitations have lasted or are expected to last twelve months or more.
- 10) Claimant's complaints and allegations concerning his impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who has the physical and mental

capacity to engage in simple, unskilled work activities 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 general, claimant has the responsibility to prove that he 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 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 (6<sup>th</sup> 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 he has significant mental limitations upon his ability to perform basic work activities such as 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).

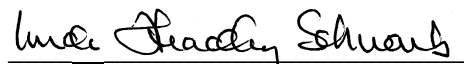
Federal regulations at 20 CFR 416.920a (d)(3) provide that, when a person has a severe mental impairment(s), but the impairment(s) does not meet or equal a listing, a residual functional capacity assessment must be done. Residual functional capacity means simply: “What can you still do despite your limitations?” 20 CFR 416.945.

In this case, claimant has a history of alcohol abuse and gout. He was hospitalized [REDACTED]. His discharge diagnosis was duodenal narrowing secondary to duodenal hematoma; alcoholism; delirium tremors; left lower lobe pneumonia, improved; gastrointestinal bleeding; and electrolyte imbalance, improved. Thereafter, claimant had no further hospitalizations. On [REDACTED], claimant’s treating psychiatrist diagnosed claimant with major depression, recurrent, rule out bipolar disorder, NOS, and alcohol dependence, early full remission. Claimant’s psychiatrist in an undated DHS-49E, presumably written some time after the hearing, opined that claimant was moderately limited with regard to the ability to understand and remember detailed instructions; the ability to carry out detailed instructions; the ability to maintain attention and concentration for extended periods; the ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; 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; the ability to respond appropriately to change in the work setting; and the ability to set realistic goals or make plans independently from others. In all other categories of understanding and memory, sustained concentration and

persistence, social interaction, and adaption, the treating psychiatrist found that claimant had no significant limitations. At the hearing, claimant testified that he believed he can work. Claimant reported that he could not think of any activities that he could not do or needed help with. Claimant testified that, in an average day, he engages in household chores, does laundry, and performs job hunting activities on the internet. Claimant testified that he believes his only barrier to employment is his criminal record. A careful consideration of the entire record by the undersigned Administrative Law Judge supports a finding that claimant is indeed capable of work activities. The hearing record does not support a finding that claimant's mental residual functional capacity precludes simple, unskilled work activities on a regular and continuing basis. Accordingly, the department's determination that claimant is not "disabled" for purposes of MA must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant is not "disabled" for purposes of the Medical Assistance program. Accordingly, the department's determination in this matter is hereby affirmed.

  
Linda Steadley Schwarz  
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

2009-12876/LSS

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:

