

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.: 2009-14223
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 24, 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 June 24, 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) 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 December 5, 2008, claimant filed an application MA-P and SDA benefits. Claimant did not request retroactive medical coverage.
- 2) On January 9, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On January 20, 2009, claimant filed a hearing request to protest the department's determination.
- 4) Claimant, age 50, is a high-school graduate.
- 5) Claimant last worked in 2001 as sky chef for an airline catering company. Claimant has also worked as a temporary services worker and an employee at an animal kennel. Claimant's relevant work history consists exclusively of unskilled work activities.
- 6) Claimant has a history of panic attacks and depression.
- 7) At the time of the hearing, claimant was the recipient of the Adult Medical Program and had access to medical treatment and prescriptions.
- 8) Claimant currently suffers from chronic obstructive pulmonary disease; tobacco abuse; vertigo with near syncope; major depressive disorder, moderate, recurrent; and anxiety disorder with panic attacks. In [REDACTED], claimant had a GAF score of 60.
- 9) Claimant has no apparent problems speaking or hearing conversational speech.
- 10) Claimant has severe limitations upon her ability to work around dangerous heights and machinery as well as working in a noisy, crowded work setting. Claimant's limitations have lasted or are expected to last twelve months or more.

- 11) 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 has the physical and mental capacity to engage in simple, unskilled, medium 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 she 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 (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, or lifting heavy objects at dangerous heights or around machinery as well as responding appropriately to others and dealing with changes in a routine work setting, especially if the work setting is noisy and crowded. 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 capable of her past work in an animal kennel. Even if claimant were no longer capable of such work, she would still be found capable of performing other work activities.

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 you 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).

This Administrative Law Judge finds that claimant's residual functional capacity for work activities on a regular and continuing basis does include the ability to meet the physical and mental demands required to perform medium work. Medium work is defined as follows:

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25

pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Certainly, there is no support in the hearing record for a finding that claimant is incapable of light work activities. Light work is defined as follows:

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

There is insufficient objective medical evidence, signs, and symptoms to support a determination that claimant is incapable of performing the physical and mental activities necessary for a wide range of light to medium work activities. A mental status evaluation performed on claimant on [REDACTED], resulted in a finding of major depressive disorder, moderate, recurrent and anxiety disorder with panic attacks. Claimant's current GAF score was said to be 60. On [REDACTED], claimant's treating psychiatrist at [REDACTED] opined that claimant was moderately to markedly limited with regard to her ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances. The treating psychiatrist found 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 sustain an ordinary routine without supervision; 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 main socially-appropriate behavior and to adhere to basic standards of neatness and cleanliness; and the ability to set

realistic goals and make plans independently of others. The treating psychiatrist found that claimant was not significantly limited or moderately limited with regard to the ability to work in coordination with or proximity to others without being distracted by them; the ability to get along with co-workers and peers without distracting them or exhibiting behavioral extremes; the ability to respond appropriately to change in the work setting; and the ability to travel in unfamiliar places or use public transportation. The treating psychiatrist found that claimant was not significantly limited with regard to her ability to remember locations and work-like procedures; the ability to understand and remember one- or two-step instructions; the ability to carry out simple, one- or two-step instructions; the ability to make simple work-related decisions; the ability to interact appropriately with the general public; the ability to ask simple questions or request assistance; and the ability to be aware of normal hazards and take appropriate precautions.

On [REDACTED], claimant's general practitioner diagnosed claimant with major depression, vertigo/near syncope, and chronic obstructive pulmonary disease. The physician 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 physician indicated that claimant was capable of repetitive activities with the bilateral upper and lower extremities. The physician indicated that claimant demonstrated limitations with regard to memory, sustained concentration, and social interaction. On [REDACTED], the same general practitioner diagnosed claimant with depression versus dysthymia (possibly bipolar II), chronic obstructive pulmonary disease, vertigo, and seizure disorder. The physician again opined that claimant was incapable of lifting any amount of weight. The physician noted that claimant had difficulties with sustained concentration and social interaction. A careful review of the hearing record reveals no basis or

support for the opinion of the treating physician with regard to a diagnosis of seizure disorder. Rather, it appears that all testing in that regard has been normal. The treating physician's opinion as to limitations upon claimant's ability to walk or stand as well as limitations upon ability to lift are not supported by acceptable medical evidence consisting of clinical signs, symptoms, laboratory or test findings, or evaluative techniques and is not consistent with other substantial evidence in the record. Claimant's physician did not present sufficient medical evidence to support his opinion. At the hearing, claimant testified that she experiences her near syncope events and panic attacks once or twice a month. She testified that she engages in cooking, laundry, grocery shopping with family members, and cleaning her own room. Claimant testified that she can walk a distance and can stand up to forty-five minutes. She reported no difficulties with sitting. A careful review of the evidence fails to support the position that claimant is incapable of a wide range of light to medium work activities.

Considering that claimant, at age 40, has a high-school education, has an unskilled work history, and has the physical capacity for light to medium work activities, this Administrative Law Judge finds that claimant's impairment does not prevent her from doing all other work. See 20 CFR, Part 404, Subpart P, Appendix 2, Table 3, Rule 203.21. Also see Med Voc Rule 202.20. It does appear reasonable that claimant should avoid work involving dangerous heights and machinery in view of her vertigo/near syncope problem. Since the record will not support the position that claimant is incapable of all substantial gainful activity, the department must be affirmed in its determination that claimant is not "disabled" for purposes of MA.

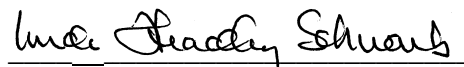
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R

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. In this case, there is insufficient medical evidence to support a finding that claimant is incapacitated or unable to work under SSI disability standards for at least 90 days. Therefore, the undersigned finds that claimant is not presently “disabled” for purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services properly determined that claimant is not “disabled” for purposes of the Medical Assistance and State Disability Assistance programs. Accordingly, the department’s decision in this matter is hereby affirmed.


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

Date Signed: February 10, 2010

Date Mailed: February 16, 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:

