

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.: 2009-23002
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
July 16, 2009
Macomb County DHS (20)

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 July 16, 2009. Claimant appeared and testified. Claimant was represented by [REDACTED] of [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 August 12, 2008, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to July of 2008.

- 2) On January 22, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On March 5, 2009, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 55, has a ninth-grade education. Claimant reports serious problems with reading, writing, and mathematical ability.
- 5) Claimant has had no relevant work experience.
- 6) Claimant suffers from chronic back pain secondary to degenerative changes of the lumbar spine; hypertension, poorly controlled; chronic left lower extremity cellulitis; chronic headaches; obesity; chronic obstructive pulmonary disease; history of alcohol abuse, reportedly in complete remission; neuropathy of the bilateral lower extremities; borderline range of intellectual functioning (full-scale IQ of 69); major depressive disorder, recurrent, severe, without psychotic features; and personality disorder, NOS.
- 7) Claimant has severe limitations upon her ability to walk, stand, lift, push, pull, reach, carry, and handle; understanding, carrying out, and remembering simple instructions; use of judgment; responding appropriately to others; and dealing with changes in a routine work setting. Claimant's limitations have lasted twelve months or more.
- 8) Claimant has a valid full-scale IQ of 69 as well as other physical and mental impairments which impose additional and significant work-related limitations.

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, and 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. A careful review of the entire hearing record convinces the undersigned Administrative Law Judge that claimant's impairments meet or equal a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A, Section 12.05C. Medical evidence has established that claimant has a valid full-scale IQ of 69 and additional physical and mental impairments which impose significant work-related limitations.

On [REDACTED], claimant's treating physician diagnosed claimant with hypertension, cellulitis, recurring back pain, and neuropathy in the bilateral legs. The physician opined that claimant was limited to occasionally lifting less than ten pounds and standing and walking less than two hours in an eight-hour work day. The physician found claimant to be incapable of fine manipulation with the bilateral upper extremities and incapable of operating foot or leg controls with the bilateral lower extremities. On [REDACTED], an x-ray of claimant's lumbar spine documented degenerative changes. On [REDACTED], claimant was seen by a consulting internist for the department who provided an impression of hypertension, left lower extremity cellulitis, chronic headaches, obesity, depression, and chronic back pain. The consultant provided the following statement:

“Based upon the exam today, the examinee is able to occasionally lift 15 to 20 pounds. She is able to stand or walk about 4 hours in an 8 hour work day. She is able to sit about 6 hours in an 8 hour work day. She is able to use her upper extremities for simple grasping, reaching, pushing, pulling, and fine manipulation. She is able to operate foot and leg controls. She does need further evaluation for her blood pressure as well as depression.”

On [REDACTED], claimant was seen by a consulting psychologist for the [REDACTED]. [REDACTED]. The psychologist found claimant to have a valid full-scale IQ of 69. In that regard, the consultant stated as follows:

“... full scale IQ score of 69 places her in the top of the extremely low range of intellectual functioning. This appears to be an accurate assessment of her current level of functioning based on intratest scatter and pattern of near misses. However, she most likely operates in the borderline range of intellectual functioning.”

The psychologist provided a diagnosis of by history learning disorder; major depressive disorder, recurrent, severe, without psychotic features; and personality disorder, NOS. The psychologist provided the following additional comments:

“Guarded due to the nature of her problems. Claimant does not appear capable of managing her funds. It is this writer’s opinion that claimant does not appear suitable for work. She has numerous medical complaints, emotional issues and is unable to read or write. She is able to interact appropriately with others and has no difficulty understanding what is being asked of her but written directions pose difficulty for her. If she were to be employed the amount of stress and pressure would cause further problems. Claimant is recommended to interact with the mental health system since her depression is untreated.”

Claimant was seen by a consulting internist for the [REDACTED] on [REDACTED]. [REDACTED]. The internist provided the following medical source statement:

“Based upon today’s examination, the claimant should be able to work 8 hours per day, preferably sitting, as standing promotes severe pain. Claimant has neuropathy in both legs and etiology has to be determined. She has severe limitation upon straight leg raising, possibly degenerative joint disease versus disc disease.

Lifting, carrying, pushing and pulling ability should be limited to an occasional basis and 10 pounds or so. Claimant's grip strength was satisfactory. She should be able to use bilateral hands for fine manipulation. There is no limitation on climbing stairs. However, climbing ropes, ladders and scaffolding should be limited secondary to the radiculopathy and neuropathy of the lower extremities and limitation of the back range of motion."

On [REDACTED], claimant's treating family physician diagnosed claimant with hypertension, neuropathy of the lower extremities, restless leg syndrome, liver disease, and hepatitis C. The physician limited claimant to standing or walking less than two hours in an eight-hour work day and sitting less than six hours in an eight-hour work day. The physician indicated that claimant was incapable of pushing/pulling with the bilateral upper extremities and incapable of operating foot or leg controls with the bilateral lower extremities. The physician noted memory and sustained concentration problems.

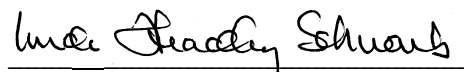
Listing 12.05C requires a valid verbal, performance, or full-scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function. The additional impairment (other than mental retardation) must meet the "severity period" standard. The "severity period" step of the sequential evaluation analysis is a threshold inquiry which allows only "claims based on the most trivial impairments to be rejected." Claimant's burden of showing severity is *mild*. A claimant "need only show that (his or her) impairment is not so slight and its effect is not so minimal." *McDaniel v Bowen*, 800 F2d 1026, 1031 (11 CA, 1986). An impairment is not severe if it is a slight abnormality which has such a minimal effect on the individual that it would not be expected to interfere with the individual's ability to work, irrespective of age, education, or work experience. *Brady v Heckler*, 724 F2d 914, 920 (11 CA, 1984). In this case, a consulting psychologist for the [REDACTED] [REDACTED] established that claimant has a valid full-scale IQ of 69. X-rays and

evaluations by claimant's treating physician as well as consultants for the department and the [REDACTED] have confirmed additional impairments such as degenerative changes of the lumbar spine, major depressive disorder, and personality disorder. The medical record clearly establishes that, in addition to intellectual deficits, claimant has a severe impairment which imposes additional and significant work-related limitations of function. Accordingly, the undersigned must find that claimant is "disabled" for purposes of the MA program. Further, even if claimant did not meet or equal a listing, she is clearly limited to sedentary work activities. As such, she would also be found disabled. See Med Voc Rule 201.01.

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 program as of July of 2008.

Accordingly, the department is ordered to initiate a review of the August 12, 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 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 April of 2011.


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

Date Signed: February 16, 2010

Date Mailed: February 18, 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:

