

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.: 2009-34529
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
October 28, 2009
Wayne County DHS (15)

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 October 28, 2009. Claimant appeared and testified. Claimant was represented by [REDACTED] of [REDACTED].

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 16, 2008, an application was filed on claimant's behalf for MA-P and SDA benefits. The application did not request retroactive medical coverage.

- 2) On April 23, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On July 21, 2009, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 22, has a high-school education.
- 5) Claimant last worked in July of 2008 as an activities assistant at St. Jude's. Claimant has also performed relevant work as a cashier in a fast food restaurant. Claimant's relevant work history consists exclusively of unskilled work activities.
- 6) Claimant has a history of systemic lupus erythematosus and inflammatory bowel disease.
- 7) Claimant was hospitalized [REDACTED] following complaints of acute lower gastrointestinal bleed. She was taken to surgery for an emergency ostomy. Her discharge diagnosis was acute colonic perforation secondary to multiple colonic ulcers; acute peritonitis; acute inflammatory bowel disease with perforation; acute blood loss anemia; acute electrolyte imbalance; acute respiratory insufficiency; reflex ileus; anemia of chronic inflammation; and acute debility.
- 8) Claimant was re-hospitalized [REDACTED] for abdominal pain. Her discharge diagnosis was acute peritonitis; acute partial bowel obstruction; acute reflex ileus; acute electrolyte imbalance; status post perforated viscus; and acute and chronic pain syndrome.
- 9) Claimant was re-hospitalized [REDACTED] following admission for nausea, emesis, abdominal pain, and leukocytosis. Her discharge

diagnosis was acute urinary tract infection; acute recurrent abdominal pain with intractable nausea and emesis; acute inflammatory bowel disease; acute sinusitis; acute dehydration; recurrent cephalgia; history of perforated cecum with peritonitis; and history of lupus erythematosus.

- 10) Claimant was hospitalized [REDACTED] following complaints of abdominal pain, lower gastrointestinal bleed, and multiple symptomatology. Her discharge diagnosis was acute recurrent abdominal pain; acute lower GI hemorrhage, multifactorial; acute colitis with ulcerations; acute exacerbation of inflammatory bowel disease; systemic lupus erythematosus; reversal of ostomy; acute debility; non insulin-dependent diabetes mellitus with glucose intolerance; chronic pain system; urinary tract infection; history of perforated cecum; and reversal of the ileostomy.
- 11) Claimant was re-hospitalized [REDACTED]. She was admitted with acute pneumoperitoneum, nausea, and vomiting. She underwent a colonic resection with an ostomy. Her discharge diagnosis was acute multiple spontaneous perforations of the small and large bowel; acute hemorrhagic shock; acute septic shock; acute septicemia; acute pneumonia; acute recurrent abdominal pain; acute GI bleed; acute and persistent tachycardia; acute debility; recurrent pain syndrome; connective tissue disease; postop infective seroma versus abscess; mixed protein depletion; abdominal wall infection; and urinary tract infection.
- 12) Claimant was hospitalized [REDACTED] following admission for abdominal pain, nausea, emesis, and dehydration. Her discharge diagnosis was acute pancreatitis; acute intractable nausea and emesis; acute mixed protein

depletion with intractable pain; acute urinary tract infection; acute electrolyte imbalance; and severe debility.

- 13) Claimant currently suffers from systemic lupus erythematosus; chronic inflammatory bowel disease; and chronic abdominal pain.
- 14) Claimant has severe limitations upon her ability to walk, stand, sit, lift, push, pull, reach, carry, or handle as well as limitations upon her ability to respond to others and deal with change 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. Accordingly, 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 claimant has significant physical and mental limitations upon her ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling as well as capacities for responding appropriately to supervision, co-workers and unusual 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, sitting, or lifting 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 suffers from systemic lupus erythematosus, inflammatory bowel disease, and chronic abdominal pain. Claimant has undergone numerous hospitalizations and surgeries to address her chronic condition. On [REDACTED], claimant's treating primary care physician opined that claimant was limited to standing and walking less than two hours in an eight-hour work day and limited to sitting less than six hours in an eight-hour work day. The physician indicated that claimant was incapable of reaching or pushing/pulling with the bilateral upper extremities and incapable of operating foot or leg controls with the bilateral lower extremities. Claimant testified quite credibly that she experiences chronic and intense pain as well as fatigue, weakness, and blurry vision.

After careful review of claimant's extensive medical record and the undersigned's personal observation of 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 2, Section 201.00(h). See Social Security Ruling 83-10. The record supports a finding that claimant does not have the residual functional capacity for substantial gainful activity.

Further, claimant's chronic fatigue and pain prevent claimant from performing work activities on a regular and continuing basis. It is reasonable to assume that any work attempt would be marred by frequent absences which would not be tolerated in the work place. See *Douglas v Bowen*, 836 F2d 392 (1987) and *Nance v Barnhart*, 194 F Supp 2d 302 (2002). 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 claimant could perform despite her limitations. Accordingly, the undersigned 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).

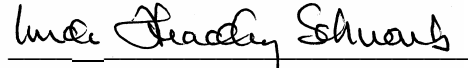
A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (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. In this case, because claimant has been found “disabled” for purposes of the MA program, she must also 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 July of 2008.

Accordingly, the department is ordered to initiate a review of the July 16, 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 December of 2010.


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

Date Signed: February 2, 2010

Date Mailed: February 3, 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:

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