

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.: 2009-37244
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
November 12, 2009
Wayne County DHS (57)

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 November 12, 2009. Claimant appeared and testified.

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 December 9, 2008, claimant applied for MA-P benefits. Claimant did not request retroactive medical coverage.
- 2) On June 16, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.

- 3) On August 5, 2009, claimant filed a hearing request to protest the department's determination.
- 4) Claimant, age 51, has an eighth grade education.
- 5) Claimant has had no past relevant work experience.
- 6) Claimant suffers from mitral valve prolapse, degenerative disc disease of the lumbar spine, cognitive disorder (performance IQ of 54), and depressive disorder. Claimant's GAF score [REDACTED] was 40.
- 7) Claimant has severe limitations upon his ability to walk, stand, sit, lift, push, pull, reach, carry, or 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 for twelve months or more.

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 he has significant physical and mental limitations upon his ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; understanding, carrying out, and remembering simple instructions; use of judgment; responding appropriately to supervision, co-workers, 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. Based upon claimant’s diagnoses as stated above, the undersigned finds that claimant’s impairments meet or equal a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A, Section 12.05E. Medical evidence has established

that claimant has a valid verbal, performance, or full scale IQ of 59 or less. Claimant was seen by a consulting psychologist for the [REDACTED] on [REDACTED].

Following testing and evaluation, the evaluator found that claimant had a performance IQ of 54 and full scale IQ of 59. The test results were said to be valid. The consultant diagnosed claimant with cognitive disorder NOS and depressive disorder NOS. Claimant was given a GAF score of 40. The consultant commented as follows:

The claimant's ability to understand or follow simple direction and perform basic, routine, and repetitive tasks appears moderately impaired. His ability to interact with co-workers, supervisors, and the public appears adequate... It is the belief of this examiner that claimant is unable to manage his benefit funds independently at this time."

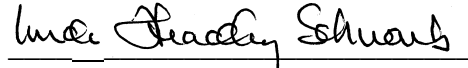
The medical record clearly establishes that claimant has intellectual deficits which meet listing 12.05B. Accordingly, the undersigned finds that claimant is "disabled" for purposes of the MA program.

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 December of 2008.

Accordingly, the department is ordered to initiate a review of the December 9, 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 February of 2011.


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

Date Signed: February 3, 2010

Date Mailed: February 4, 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:

