

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.: 2009-8412
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 19, 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 March 19, 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 May 23, 2008, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to February of 2008.

- 2) On August 15, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On November 10, 2008, a hearing request was filed on claimant's behalf to protest the department's determination.
- 4) Claimant, age 26, is a high-school graduate.
- 5) Claimant has a history of mental health problems and polysubstance abuse. His substance abuse is reportedly in remission.
- 6) Claimant was hospitalized [REDACTED] as a result of suicidal and homicidal impulses. Claimant was given a discharge diagnosis of bipolar disorder.
- 7) Claimant was hospitalized [REDACTED] as a result of suicidal ideation. His discharge diagnosis was bipolar disorder Type II, depressed; polysubstance dependence; and anti-social personality disorder. His GAF score upon discharge was 42.
- 8) Claimant was hospitalized [REDACTED]. His discharge diagnosis was major depression, recurrent. His GAF score upon discharge was 35.
- 9) Claimant was hospitalized [REDACTED] for acute cephalgia secondary to migraines.
- 10) Claimant was hospitalized [REDACTED], as a result of suicidal ideation. Following clinical certification, he was transferred to Harbor Oaks.
- 11) Claimant suffers from bipolar disorder Type I-depressed; history of polysubstance abuse; and anti-social versus borderline personality disorder.

- 12) Claimant is capable of meeting the physical and intellectual demands associated with employment on a regular and continuing basis.
- 13) Claimant's current psychiatric functioning has presented or is expected to prevent substantial gainful employment 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 mental limitations upon his ability to perform basic work activities such as 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. 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 bipolar disorder and polysubstance abuse. Claimant was hospitalized [REDACTED] as a result of suicidal and homicidal impulses. He was discharged with a diagnosis of bipolar disorder. Claimant was re-hospitalized

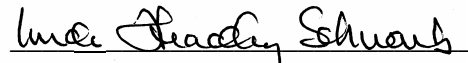
[REDACTED] as a result of suicidal ideation. His discharge diagnosis was bipolar disorder Type II, depressed; polysubstance dependence; and anti-social personality disorder. His GAF score upon discharge was 42. Claimant was placed in [REDACTED]. His discharge diagnosis was major depression, recurrent. His GAF score upon discharge was 35. Claimant was seen in an emergency room on [REDACTED], as a result of acute cephalgia related to migraine. Claimant was evaluated at the [REDACTED] on [REDACTED] following a request for clinical certification. Once the certification was completed, claimant was transferred to [REDACTED].

On [REDACTED], claimant's treating psychiatrist from [REDACTED] diagnosed claimant with bipolar disorder Type I-depressed with history of psychotic features and history of polysubstance abuse. The treating psychiatrist gave claimant a current GAF score of 45. Claimant was seen by a consultant psychiatrist for the department on [REDACTED]. The consultant provided a diagnosis of bipolar disorder, depressed; amphetamine and marijuana abuse-in remission; and anti-social versus borderline personality disorder. The consultant gave claimant a current GAF score of 48 and opined that claimant was moderately to markedly limited in nearly every area of understanding and memory, sustained concentration and persistence, social interaction, and adaptation. Based upon the medical record, the undersigned Administrative Law Judge finds that, although claimant has the physical and intellectual capacity to work, his psychiatric functioning currently precludes work activities on a regular and continuing basis. Further, the record supports a finding that claimant's impairment has lasted or is expected to last twelve months or more. Accordingly, the undersigned finds that claimant is presently 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 February of 2008.

Accordingly, the department is ordered to initiate a review of the May 23, 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 his 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 Schwarz
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.

2009-8412/LSS

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:

