

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.: 2010-10436
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
February 3, 2010
Macomb County DHS (12)

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 February 3, 2010. 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 August 28, 2009, claimant filed an application for MA-P benefits. The application did not request retroactive medical coverage.

- 2) On October 7, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On October 23, 2009, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 51, received a high-school education with special education services.
- 5) Claimant last worked in 2008 as a security guard. Claimant has also performed work as a janitor, housekeeper, and factory work. Claimant's relevant work history consists exclusively of unskilled work activities.
- 6) Claimant is developmentally disabled with a full-scale IQ of 55, a fourth-grade reading level, and a mental age equivalent of eight years, ten months.
- 7) Claimant also suffers with osteoarthritis of the right knee and multiple joints, morbid obesity, gastroesophageal reflux disease, and chronic pain syndrome.
- 8) Claimant currently suffers from significant sub-average general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period.

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 from 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 and standing for long periods of time and lifting heavy objects; use of judgment; responding appropriately to others, 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.

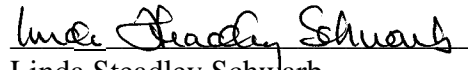
In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant’s impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Claimant has been diagnosed as developmentally disabled

with a full-scale IQ of 55, a fourth-grade reading level, and a mental age equivalent of eight years and ten months. Claimant was seen by a consulting psychologist on [REDACTED], at the request of [REDACTED] as part of an evaluation to determine whether claimant requires the assistance of a Guardian and/or Conservator to assist in managing her affairs. Following evaluation and testing, claimant was found to have a full-scale IQ of 55 and a mental equivalent age of eight years and ten months. Her capacity for substantial gainful activity is further eroded by limitations caused by osteoarthritis of the right knee and multiple joints, morbid obesity, gastroesophageal reflux disease, and chronic pain syndrome. On [REDACTED], claimant was seen by a consulting internist for the [REDACTED]. The consultant provided an impression of chronic lumbar back pain, mild; chronic shoulder pain, mild; chronic osteoarthritis of multiple joints, mild; chronic left ankle pain, status post fracture; coronary artery disease with questionable heart attack or mini-stroke; renal stone, recently diagnosed; and depression and anxiety by history. On [REDACTED], claimant's treating family practitioner diagnosed claimant with degenerative osteoarthritis of the right knee and multiple joints, chronic pain syndrome, morbid obesity, and gastroesophageal reflux disease. The physician opined that claimant was limited to occasionally lifting ten pounds as well as limited to standing or walking at least 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 repetitive activities with the upper right extremity. After careful consideration of the entire hearing record, the undersigned finds that claimant meets or equals a listing. See 12.05B. Accordingly, claimant must be found to be 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 August of 2009.

Accordingly, the department is ordered to initiate a review of the August 28, 2009, 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 May of 2011.


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

Date Signed: May 12, 2010

Date Mailed: May 17, 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.

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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:

