

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2010-2054
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 4, 2010
DHS County: Oakland (63-02)

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 January 4, 2010. Claimant appeared and testified. Claimant was represented by Hassan Abraham of L&S Associates. 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) 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 January 29, 2009, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to October of 2008.
2. On March 2, 2009, claimant filed an application seeking SDA benefits.
3. On June 3, 2009, the department denied claimant's applications for benefits based upon the belief that claimant did not meet the requisite disability criteria.
4. On August 31, 2009, a hearing request was filed to protest the department's determination.

5. Claimant, age 40, has a high-school education.
6. Claimant last worked in 2007 as a direct care aide. Claimant has also worked as a press operator and a waitress.
7. Claimant has a history of chronic obstructive pulmonary disease – bronchitis, multiple left breast surgeries for recurring mastitis, and opiate dependence.
8. Claimant was hospitalized [REDACTED] for asthma exacerbation and congestive heart failure.
9. Claimant was hospitalized [REDACTED] for chronic obstructive pulmonary disease exacerbation.
10. Claimant was hospitalized [REDACTED] for ventilator-dependent respirator failure secondary to acute asthma exacerbation; heroin abuse; tobacco abuse; pneumonia; and elevated liver enzymes with dilated common bile duct.
11. Claimant was hospitalized [REDACTED] for chronic obstructive pulmonary disease, acute exacerbation.
12. Claimant was hospitalized [REDACTED] for asthma exacerbation, bronchitis, leukocytosis, anxiety disorder, and opiate abuse disorder in the past.
13. Claimant was hospitalized [REDACTED]. Her discharge diagnosis was acute on chronic respiratory failure with acute exacerbation of chronic obstructive pulmonary disease.
14. Claimant was hospitalized [REDACTED] for dyspnea secondary to chronic obstructive pulmonary disease exacerbation.
15. Claimant currently suffers from bipolar disorder – depressed; chronic obstructive pulmonary disease; and opioid dependence in early remission.
16. Claimant has severe limitations upon her ability to walk, stand, lift, push, pull, reach, carry, and handle as well as limitations with judgment, responding appropriately to others, and dealing with change. Claimant's limitations have lasted or are expected to last twelve months or more.
17. 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 (BAM), the Program Eligibility Manual (BEM) 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; as well 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. Based upon the hearing record, 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 3.03. Claimant suffers from bipolar disorder – depressed, chronic obstructive pulmonary disease, and opiate dependence in early remission. She has required hospitalization as a result of acute chronic obstructive pulmonary disease exacerbation on a frequent basis. Additionally, claimant was seen by a consulting psychiatrist for the [REDACTED] on [REDACTED]. The consultant diagnosed claimant with bipolar disorder, depressed, and opioid dependence in early remission. Claimant was given a GAF score of 46 and the consultant opined that claimant is not able to manage her benefit funds. Claimant was seen by a consulting psychologist for the department on [REDACTED]. The consultant diagnosed claimant with major depressive disorder, recurrent, and opioid dependence in partial remission. The consultant gave claimant a current GAF of 46 and found claimant to be markedly limited with regard to her ability to interact with others as well as understand, remember, and carry out simple tasks. The consultant found claimant to have marked impairment of her ability to maintain attention, concentration, and persistence. After careful consideration of the entire hearing record, the undersigned finds that claimant meets or equals a listed impairment.

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 (BAM), the Program Eligibility Manual (BEM) 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 BEM Item 261. Inasmuch as claimant has been found "disabled" for purposes of MA, she must also be found "disabled" for purposes of SDA benefits.

The Medical Social Work Consultant (MSWC), in conjunction with the Medical Review Team (MRT), is to consider the appropriateness of directing claimant to participate in appropriate mental health and/or substance abuse treatment. Unless the MSWC determines that claimant has good cause for failure to participate in mandatory treatment, claimant will lose eligibility for MA-P and SDA benefits. See BEM Items 260 and 261.

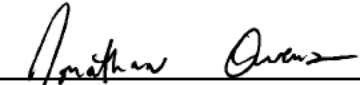
Further, a referral is to be made to Adult Protective Services for an evaluation of possible financial management problems. Specifically, before SDA benefits may be paid to claimant, Adult Protective Services is to assess the appropriateness of a payee or conservatorship for claimant because of mental health or substance problems which may prevent adequate management or discharge of financial or other personal affairs. See Adult Services Manual, Item 215.

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 October of 2008.

Accordingly, the department is ordered to initiate a review of the January 29, 2009, and March 2, 2009, applications, 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 2011.

The Medical Social Work Consultant, in conjunction with the Medical Review Team, is to consider the appropriateness of ordering claimant to participate in mandatory mental health and/or substance abuse treatment as a condition of receipt of benefits. Further, a referral is to be made to Adult Protective Services consistent with this Order.


Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 15, 2010

Date Mailed: December 20, 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.

JWO/pf

cc:

