

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2010-23600
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: August 25, 2010
DHS County: Wayne (82)

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 August 25, 2010. Claimant appeared and testified. Claimant was represented by [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) 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 16, 2009, an application was filed on claimant's behalf for MA-P benefits. The application did not request retroactive medical coverage.
2. On February 26, 2010, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
3. On February 23, 2010, a hearing request was filed to protest the department's determination.
4. Claimant, age 51, has a tenth-grade education.

5. Claimant last worked in 2005 for a small grocery store performing stock work and/or meat cutting. Claimant's relevant work history consists exclusively of unskilled work activities.
6. Claimant has a history of polysubstance abuse and tobacco dependence.
7. Claimant was hospitalized [REDACTED] following an acute lacunar infarct in the posterior limb of the right internal capsule (cerebrovascular accident). Her discharge diagnosis was acute lacunar infarct, neurosyphilis, hypertension, and hypercholesterolemia.
8. Claimant was placed in the [REDACTED] from [REDACTED]. Her discharge diagnosis was left hemiparesis secondary to right lacunar infarct; hypertension, uncontrolled; neurosyphilis; left elbow pain; superficial burn of the third right digit; tobacco dependency; polysubstance abuse; obesity; falls; chronic anemia; hypomagnesemia; and hypokalemia.
9. Claimant currently suffers from left side weakness secondary to [REDACTED] cerebrovascular accident; hypocholesterolemia; hypertension; and advanced chronic small vessel ischemic changes of the brain and central atrophy of the brain (see MRI [REDACTED]) with right and left hemispheric dysfunction and cognitive impairment consistent with vascular dementia.
10. Claimant has severe limitations upon her ability to walk and stand for long periods of time as well as pushing, pulling, reaching, carrying, or handling with the left upper extremity as well as memory, use of judgment, ability to respond appropriately to others, and dealing with change. Claimant's limitations have lasted or are expected to last twelve months or more.
11. 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; understanding, carrying out, and remembering simple instructions; 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. After careful review of the entire 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 12.02. In this matter, claimant suffered a cerebrovascular accident in December of 2009 which resulted in left side weakness. A CT of the head performed on [REDACTED], demonstrated chronic white matter disease with multiple lacunar bilateral infarcts. An MRI of the brain on [REDACTED], demonstrated acute lacunar posterior RIM infarct in the right internal capsule and diffuse brain atrophy and small vessel disease. An MRI of the brain performed on [REDACTED], demonstrated dilation of the lateral and third ventricles consistent with central atrophic change as well as advanced chronic small vessel ischemic change. On [REDACTED], claimant’s treating neurologist stated as follows:

“She has had both right and left hemispheric dysfunction and was found to have cognitive impairment consistent with a vascular dementia ... An MRI completed showing bilateral third and lateral ventricle dilation due to the amount of peripheral atrophy, extensive signal abnormality seen in the supratentorial white matter basal ganglia and posterior fossa structures consistent with advanced chronic small vessel ischemic changes. This patient has significant neuropsychologic impairment from her vascular disease that is increased because of Binswanger’s pattern, i.e., chronic white matter changes, as well as multiple lacunes ie et lacunaris. Her potential for recovery is nil from these deficits. She is at risk for further progression of her

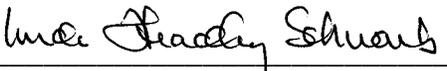
dementing process and for larger strokes ... is considered permanently disabled from a neurologic standpoint."

After careful consideration of the entire hearing record, the undersigned finds that claimant has an organic mental disorder with loss of cognitive ability and memory impairment which has resulted in marked difficulties in maintaining social functioning and marked difficulty in maintaining concentration, persistence, and pace. Accordingly, the undersigned finds that claimant meets or equals a listed impairment. The record supports a finding 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 2009.

Accordingly, the department is ordered to initiate a review of the December 16, 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 representatives (from MARS and from Legal Aid and Defender Association) 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 August of 2012.



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

Date Signed: August 26, 2010

Date Mailed: August 27, 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:

