

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.: 2010-26198
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
April 22, 2010
Oakland County DHS (02)

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 April 22, 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 August 28, 2009, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to June of 2009.

- 2) On February 20, 2010, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On March 5, 2010, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 48, is a high-school graduate.
- 5) Claimant last worked 60-70 hours a week as a waiter in October of 2009. Claimant stopped working when he was laid off.
- 6) Claimant received emergency room treatment on [REDACTED], and was discharged with a diagnosis of acute drug overdose with lethargy.
- 7) Claimant was hospitalized [REDACTED]. His discharge diagnosis was major depressive disorder, recurrent and alcohol dependence. His prognosis was said to be good.
- 8) Claimant was hospitalized [REDACTED] for acute deep vein thrombosis of the left leg.
- 9) Claimant had an emergency room visit on [REDACTED], for acute deep vein thrombosis of the left leg.
- 10) Claimant currently suffers from bipolar disorder. In [REDACTED], claimant's treating psychiatrist gave claimant a current GAF score of 60-65.
- 11) Claimant is capable of meeting the physical and mental demands associated with his past employment as a waiter.
- 12) Claimant has been receiving Unemployment Compensation benefits from [REDACTED] [REDACTED]. Claimant acknowledged that, in

receiving Unemployment Compensation benefits, he certified that he was “able to, available for, and actively seeking full-time work.”

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 general, claimant has the responsibility to prove that he is disabled. Claimant’s impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant’s statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be

sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

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, at the time of the hearing, claimant was not working. Accordingly, 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 and responding appropriately to others. 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).

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, psychiatric findings, that claimant is capable of his past work. Claimant was hospitalized in [REDACTED]. An emergency room visit on [REDACTED], resulted in a final diagnosis of acute drug overdose with lethargy. Claimant was admitted [REDACTED] [REDACTED] where he was diagnosed with major depressive disorder, recurrent and alcohol dependence. Claimant returned to the hospital in [REDACTED] for acute deep vein thrombosis of the left leg. The record does not reveal any further hospitalization. On [REDACTED] [REDACTED], claimant's treating psychiatrist diagnosed claimant with bipolar disorder. The psychiatrist opined that claimant had a current GAF score of 60-65 and that claimant was able to manage his own benefit funds. Claimant was seen by a consulting psychiatrist for the [REDACTED] [REDACTED] on [REDACTED]. The consultant diagnosed claimant with bipolar disorder, depressed type and alcohol dependence, chronic. Claimant was seen by a consulting internist for the [REDACTED] on [REDACTED]. The internist provided the following medical source statement:

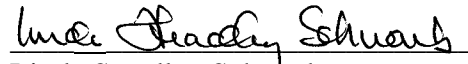
“Based upon today's exam, the claimant should be able to work as far as his physical condition is concerned. Vertigo is now treated with medication and also gout is under control. He reports limitations with walking beyond 2 blocks due to dizziness. The patient should be able to stand up for 2 hours at a time. Climbing stairs should have no limitations. Patient would have limitation climbing ropes, ladders, and scaffolding secondary to the dizziness. Pushing, pulling, and lifting should be satisfactory. Manipulation should also be without limitations, as there is a good hand grip and pinching strength.”

At the hearing, claimant acknowledged that he has been receiving Unemployment Compensation benefits since he was laid off from his job in [REDACTED]. Claimant reported that, at the

time he was laid off in [REDACTED], claimant had been working 60-70 hours a week as a waiter. Claimant further acknowledged that, in receiving Unemployment Compensation benefits, he was certifying that he was “able to, available for, and actively seeking full-time work.” After careful review of the entire hearing record, the undersigned finds that claimant is capable of past work activities. Accordingly, the department’s determination in this matter is hereby affirmed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services properly determined that claimant is not “disabled” for purposes of the Medical Assistance program. Accordingly, the department’s determination in this matter is hereby affirmed.


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

Date Signed: April 28, 2010

Date Mailed: May 5, 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:

