

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.: 2010-2937
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
December 9, 2009
Wayne County DHS (35)

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 December 9, 2009. Claimant appeared and testified. Claimant was represented by her friend, [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) 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 April 14, 2009, claimant filed an application for MA-P and SDA benefits. Claimant did not request retroactive medical coverage.
- 2) On July 20, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On September 9, 2009, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 41, is a high-school graduate.
- 5) Claimant last worked in March of 2008 as an assembly line worker. Claimant's relevant work history consists exclusively of unskilled work activities.
- 6) Claimant has a history of anxiety and panic attacks. When claimant had insurance and access to prescriptions, she reportedly benefited from medication and had essentially eliminated her panic attacks. But, since claimant has been unable to access medical treatment and prescriptions, she has greatly suffered from severe panic attacks on a frequent basis.
- 7) Claimant currently suffers from hypertension, diabetes mellitus, chronic low back pain, panic disorder without agoraphobia, generalized anxiety disorder, and borderline intellectual functioning.
- 8) Claimant has severe limitations upon her memory, use of judgment, ability to respond appropriately to others, and deal with change. Claimant's limitations have lasted or are expected to last twelve months or more.
- 9) 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 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 (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.

It is well established that the severity and disabling nature of a condition must be evaluated without regard to remediability if the claimant has no means to pay for remedial treatment. *McKnight v Sullivan*, 927 F2d 241 (6th Cir 1990); *Loveace v Bowen*, 813 F2d 55 (5th Cir 1987). Thus, when considering eligibility for MA-P, the department must first determine if claimant's condition is severe within the meaning of the Federal regulation in the absence of treatment. If, without treatment, claimant is found to have a severe impairment, then the department must determine if there is an affordable treatment available to claimant that would prevent the disability from being a severe impairment for the required duration period under Federal statute and regulation. See *McKnight, supra* at 242. If claimant does not have access to affordable treatment, the department may not deny claimant's application under 20 CFR 416.909 based upon the belief that claimant would be expected to improve with treatment. In this case, claimant suffers from a generalized anxiety disorder with severe panic attacks. The record suggests that claimant's condition improved with medication to the point that her panic attacks were essentially eliminated. Unfortunately, since she had no access to medication, she has suffered from severe panic attacks on a frequent basis. The record supports a finding that claimant has no medical insurance or access to treatment. Claimant testified that [REDACTED] [REDACTED] would not provide claimant with treatment for anxiety unless claimant had a secondary psychiatric diagnoses. The record supports a finding that claimant has been unable to obtain treatment to address her anxiety and panic disorder. Hence, since claimant cannot afford medical treatment, claimant may not be eliminated from eligibility for MA based upon the belief that she would not meet the requisite durational requirement if she did have medical treatment.

In this case, claimant has presented the required medical data and evidence necessary to support a finding that she has significant mental limitations upon her ability to perform basic

work activities such as 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. 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 had a long history of anxiety with panic attacks. Claimant was seen by a consulting psychologist for the department on [REDACTED]. The consultant diagnosed claimant with panic disorder without agoraphobia, generalized anxiety disorder, and borderline intellectual functioning. The consultant opined that claimant is markedly disabled with regard to her ability to maintain attention and concentration for extended periods; the ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; and the ability to complete a normal work day and work

week without interruptions from psychologically-based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. The consultant found claimant to be moderately limited with regard to her ability to understand and remember detailed instructions; the ability to carry out detailed instructions; the ability to sustain an ordinary routine without supervision; the ability to accept instructions and respond appropriately to criticism from supervisors; the ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes; the ability to respond appropriately to change in the work setting; the ability to be aware of normal hazards and take appropriate precautions; and the ability to set realistic goals and make plans independently of others. Further, it appears that, without medication and treatment, claimant's frequent and severe panic attacks will prevent claimant from performing work activities on a regular and continuing basis. Any work attempt would likely be marred by frequent absences which would not be tolerated in the work place. See *Douglas v Bowen*, 836 F.2d 392 (1987) and *Nance v Barnhart*, 194 F.Supp.2d 302 (2002).

Based upon the hearing record, the undersigned finds that, although claimant may have the physical and intellectual capacity for work, her current psychiatric functioning precludes work activities on a regular and continuing basis. The department has failed to provide vocational evidence which establishes that claimant has the residual functional capacity for substantial gainful activity. Accordingly, the undersigned finds that claimant is presently disabled for purposes of the MA program.

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

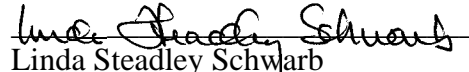
400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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 PEM Item 261. Inasmuch as claimant has been found "disabled" for purposes of MA, she must be found "disabled" for purposes of SDA benefits.

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 April of 2009.

Accordingly, the department is ordered to initiate a review of the April 14, 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 April of 2011.


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

Date Signed: April 29, 2010

Date Mailed: May 3, 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:

