

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.: 2010-5222
Issue No.: 2009, 4031, 5025
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
May 12, 2010
Macomb County DHS (20)

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 May 12, 2010. Claimant appeared and testified. Following the hearing, the record was kept open for the receipt of additional medical evidence. Additional documents were received and reviewed.

ISSUE

1. Did the Department of Human Services (DHS or department) properly deny claimant's request for assistance under the State Emergency Relief (SER) program with overdue property taxes due to housing affordability?
2. Did the 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 June 18, 2009, claimant filed an application for MA-P and SDA benefits. Claimant did not request retroactive medical coverage.
- 2) On September 15, 2009, the department denied claimant's application for MA-P and SDA benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On September 18, 2009, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 48, has an eleventh-grade education.
- 5) Claimant last worked in 2007 remodeling homes. Claimant has also performed relevant work as a window installer and engaged in commercial construction.
- 6) Claimant has a history of alcohol abuse, in a reported lengthy remission; poorly controlled seizure disorder; and osteoarthritis in the bilateral hands and left shoulder.
- 7) Claimant was hospitalized in [REDACTED] for a seizure.
- 8) Claimant obtains treatment and medication for his seizure disorder from a free clinic.
- 9) Claimant currently suffers from a poorly controlled seizure disorder which, despite compliance with medication, results in seizures two to three times a month as well as osteoarthritis.
- 10) At all times relevant to this matter, claimant had no income.

- 11) On February 2, 2010, claimant applied for assistance with overdue property taxes under the SER program.
- 12) On February 5, 2010, the department denied claimant's application for SER assistance based upon the concern that claimant's home was not affordable.
- 13) On February 11, 2010, claimant filed a hearing request to protest the department's determination that he was not eligible for SER assistance with overdue property taxes.

CONCLUSIONS OF LAW

The State Emergency Relief (SER) program is established by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, *et seq.*, and by final administrative rules filed with the Secretary of State on October 28, 1993. MAC R 400.7001-400.7049. Department of Human Services (DHS or department) policies are found in the State Emergency Relief Manual (SER).

Relevant departmental policy in this matter is as follows:

Housing affordability is a condition of eligibility for State Emergency Relief (SER) and applies only to ... home ownership services and home repairs....

In this item, "total housing obligation" means the total amount the SER group must pay for rent, house payment, mobile home lot rent, property taxes and required insurance premiums....

Authorize SER for services only if the SER group has sufficient income to meet ongoing housing expenses....

Deny SER if the group does not have sufficient income to meet their total housing obligation. The total housing obligation cannot exceed 75% of the group's total net countable income. ERM 207, p. 1.

In this matter, the department followed policy in denying claimant's February 2, 2010, application for assistance with overdue property taxes because claimant's home was not affordable. Claimant had no income. He had insufficient income to meet his ongoing housing expenses. See ERM, Item 207. Per policy, the department may not provide assistance for overdue property taxes unless the ongoing cost of maintaining the home is affordable to the SER client. See ERM, Item 304, p. 3. Without income, claimant cannot meet his tax obligation on his home. Thus, the department followed policy in denying claimant's application and its decision in this matter must be affirmed.

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.

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 his ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling as well as the inability to respond appropriately to others and deal with changes in a routine work setting due to his uncontrolled seizure disorder. 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 claimant’s diagnoses as stated above, the undersigned finds that claimant’s impairment meets or equals a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A, Section 11.02. Claimant suffers from seizure disorder with daytime episodes (loss of consciousness and grand mal convulsive seizures) which occur more frequently than once per month in spite of at least three months of prescribed treatment. Claimant was seen by a consulting internist for the department on [REDACTED].

The consultant provided the following:

MEDICAL SOURCE STATEMENT:

Based upon today’s examination this claimant has moderate to severe functional impairment in occupational activity because of

the recurrent episodes of seizures. The patient also has functional impairment in both hands because of the Dupuytren's contracture.

IMPRESSION:

1. Seizure disorder, chronic, uncontrolled despite the medications.
2. Bilateral Dupuytren's contracture.
3. Chronic musculoskeletal pain.
4. Chronic osteoarthritis of multiple joints.
5. Depression by history.

On [REDACTED], claimant's treating physician diagnosed claimant with seizure disorder, two to three seizures per month in spite of taking medication. The physician noted that claimant's seizure disorder was poorly controlled despite compliance with medication. The physician noted that claimant's medication serum levels were monitored. On [REDACTED], claimant's provider at [REDACTED] diagnosed claimant with seizures, approximately two to three per month. The physician noted that claimant was taking several medications to address his seizure disorder and had his medication levels monitored. The medication levels were found to be within normal limits. Nonetheless, claimant continued to have poorly controlled seizures despite his medications. Given claimant's frequent seizures, the undersigned finds that claimant is not capable, at this time, of engaging in any type of employment on a regular and continuing basis. 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, he must also be found “disabled” for purposes of the SDA program.

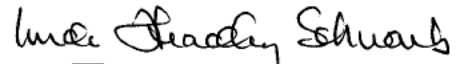
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that:

1. The Department of Human Services properly denied claimant’s application for assistance under the State Emergency Relief program with overdue property taxes because claimant’s home was not affordable. Accordingly, with regard to claimant’s February 2, 2010, application, the department’s determination must be affirmed; and,
2. Claimant meets the definition of medically disabled under the Medical Assistance and State Disability Assistance programs as of June of 2009. Accordingly, the department is ordered to initiate a review of the June 18, 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 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 June of 2011.



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

Date Signed: June 29, 2010

Date Mailed: June 30, 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:

