

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.: 2010-26193
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 21, 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 June 21, 2010. Claimant appeared and testified.

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 October 23, 2009, claimant filed an application for MA-P benefits. The application requested MA-P retroactive to July of 2009.
- 2) On February 24, 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 9, 2010, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 53, has a college degree in Business Administration from [REDACTED].
- 5) At the time of the hearing, claimant was working almost forty hours per week in temporary employment with the [REDACTED]. Claimant reports spending fifty percent of her work time on the computer and fifty percent of her work time on the telephone re-interviewing people.
- 6) Claimant has also performed relevant work as a leasing agent and administrative assistant. Claimant has transferable work skills.
- 7) Claimant testified at the hearing that she was actively seeking full-time employment as an administrative assistant or some other position in business.
- 8) Claimant testified at the hearing that she was physically capable of employment and able to work through her depression.
- 9) Claimant was hospitalized [REDACTED] with complaints of difficulty breathing. She was diagnosed with community-acquired pneumonia, bronchitis, and chronic obstructive pulmonary disease exacerbation. Claimant has had no further hospitalizations.
- 10) Claimant currently suffers from major depression, recurrent (GAF score of 56 on [REDACTED]), hypertension, and history of bronchitis.
- 11) Claimant is capable of meeting the physical and mental demands associated with her past employment as well as other forms of light work 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 (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 she 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 reported that she was working almost forty hours per week for the [REDACTED]. She testified that this was temporary employment and that she was actively seeking full-time work. It appears that claimant's current work will be expected to last only a month or two and, thus, does not rise to the level of substantial gainful activity. See 20 CFR 416.974. 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 she has significant mental limitations upon her ability to perform basic work activities such as 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 claimants ability to perform basic 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.

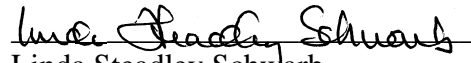
Accordingly, claimant cannot be found to be disabled based upon medical evidence alone.
20 CFR 416.920(d).

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 her from doing her past relevant work. 20 CFR 416.920(e). In this case, claimant was hospitalized [REDACTED] as a result of community-acquired pneumonia, bronchitis, and chronic obstructive pulmonary disease exacerbation. Claimant has had no other hospitalizations. At the time of the hearing, claimant reported that she was capable of working and feeling "okay." Claimant indicated that, although she was involved in temporary work with the [REDACTED], she was actively seeking full-time employment. On [REDACTED], claimant's treating psychiatrist diagnosed claimant with recurrent major depression. Claimant was given a GAF score of 56. Claimant testified that she was capable of working through her depression. It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychiatric findings, as well as claimant's own testimony as to her ability to function in the work place, that claimant is capable of her past work. Accordingly, claimant cannot be found to be disabled for purposes of the MA program. As such, the department's determination in this matter must be 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 Schwarz
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 22, 2010

Date Mailed: June 23, 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:

