

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

IN THE MATTER:

[REDACTED]

Reg. No.: 2010-27384
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: June 17, 2010
Wayne County DHS (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 June 17, 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

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 23, 2009, claimant filed an application for MA-P benefits. Claimant requested MA-P retroactive to November of 2009.
2. On January 21, 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 10, 2010, a hearing request was filed to protest the department's determination.
4. Claimant, age 47, is a high-school graduate with two years of college.
5. Claimant's last paid employment was in [REDACTED] as an assistant to a podiatrist. Claimant was laid off from her full-time job.

6. During the seven months prior to the hearing, claimant has been working at least forty hours per week as an unpaid childcare provider.
7. Claimant was hospitalized [REDACTED] 09. Her discharge diagnosis was candida glabrata fungemia; diabetic ketoacidosis; new onset diabetes mellitus complicated by labile blood glucose; acute altered mental status; acute renal failure; electrolyte abnormalities; eczema; elevated liver enzymes; acute sinusitis; and hypothyroidism.
8. Claimant has had no further hospitalizations
9. Claimant is capable of meeting the physical demands associated with childcare as well as her past employment as a doctor's assistant and other forms of work on a regular and continuing basis.
10. Claimant has been receiving Unemployment Compensation benefits since she was laid off from her job in [REDACTED]. Claimant acknowledged that, in receiving Unemployment Compensation benefits, she certified that she was "able to, available for, and actively seeking full-time work."
11. At the hearing, claimant testified that she is not disabled and is capable of working full time. Claimant reported that she is capable of full-time work as a day care provider, doctor's assistant, and food caterer.

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 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 hearing, claimant testified that, for the last seven months, she has worked at least forty hours per week as a childcare provider. Claimant testified that this work has been unpaid. 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, the record does indicate that claimant was in [REDACTED] diagnosed with new onset diabetes mellitus. The condition certainly does require medical attention. But, claimant as not met her burden of proof that she has an impairment that is severe or significantly limits her physical or mental ability to perform basic work activities necessary for most jobs. The evidence fails to support the position that claimant is incapable of basic work activities. See 20 CFR 416.927. Claimant testified at the hearing that, for the previous seven months, she has been working at least forty hours per week as an unpaid childcare provider. Claimant testified that she believes that she is not disabled and that she is capable of full-time work. Claimant indicated that she could work as a daycare provider, doctor’s assistant, or food caterer. But, even if claimant were found to have a severe impairment, she would still be found capable of performing other work.

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).

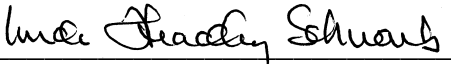
In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant’s impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the entire hearing record, that claimant is capable of her past work activities. On [REDACTED], claimant’s treating internist diagnosed claimant with diabetes mellitus, chronic sinusitis, hypothyroidism, and asthma. The physician opined that claimant was incapable of lifting any amount of weight, limited to standing or walking less than two hours in an eight-hour work day, limited to sitting about six hours in an eight-hour work day, and incapable of repetitive activities with the upper or lower extremities. The opinion of claimant’s treating physician is not supported by acceptable medical consisting of clinical signs, symptoms, laboratory or test findings, or evaluative techniques and is not consistent with other substantial evidence in the record. Claimant’s physician did not present sufficient medical evidence to support his opinion. The evidence presented fails to support the position that claimant is incapable of a wide range of work activities. See 20 CFR 416.927c(2) and .927d(3) and (4). Certainly,

claimant's own testimony supports the position that claimant is capable of her past work as a doctor's assistant. She is most certainly capable of paid work as a childcare provider. Claimant testified at the hearing that she has been receiving Unemployment Compensation benefits since she was laid off from her job in [REDACTED]. Claimant further acknowledged that, in receiving Unemployment Compensation benefits, claimant was certifying that she was "able to, available for, and actively seeking full-time work." After careful consideration of the entire hearing record, the undersigned finds that claimant is capable of past work activities on a regular and continuing basis. Accordingly, 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 Schwarb
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 9, 2010

Date Mailed: August 10, 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: [REDACTED]