

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.: 2010-32682
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 16, 2010
Wayne County DHS (49)

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 16, 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) 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 March 5, 2010, claimant filed an application for MA-P and SDA benefits. Claimant did not request retroactive medical coverage.

- 2) On April 13, 2010, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On April 21, 2010, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 52, is a high-school graduate.
- 5) Claimant last worked in January of 2010 as a security guard. Claimant has also performed relevant work as a teacher's assistant.
- 6) Claimant has had no recent hospitalizations.
- 7) Claimant is a recipient of the Adult Medical Program and, thus, has access to doctor visits and prescriptions with a small co-pay.
- 8) Claimant currently suffers from obesity, diabetes mellitus, hypertension, degenerative joint disease of the bilateral knees, and major depressive disorder, single episode, mild.
- 9) Claimant has severe limitations upon her ability to walk or stand for prolonged periods of time and/or lift extremely heavy objects. Claimant's limitations have lasted or are expected to last twelve months or more.
- 10) Claimant is capable of meeting the physical and mental demands associated with her past employment as a security guard.

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, 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 she has significant physical limitations upon her ability to perform basic work activities such as walking and standing for prolonged periods of time and/or lifting extremely heavy objects. 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 her from doing past relevant work. 20 CFR 416.920(e). In this case, claimant has been a recipient of mental health services for some time. Her most recent psychiatric evaluation was performed on [REDACTED]. The treating psychiatrist diagnosed claimant with major depressive disorder, single episode, mild. On [REDACTED], claimant’s treating psychiatrist opined that claimant was not significantly limited with regard to her ability to remember locations and work-like procedures; ability to understand and remember one or two step instructions; the ability to carry out simple, one or two

step instructions; the ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; the ability to sustain an ordinary routine without supervision; the ability to work in coordination with or proximity to others without being distracted by them; the ability to make simple work-related decisions; the ability to interact appropriately with the general public; the ability to ask simple questions or request assistance; the ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness; the ability to be aware of normal hazards and take appropriate precautions; and the ability to travel in unfamiliar places or use public transportation. The treating psychiatrist found no marked limitations in any category of understanding and memory, sustained concentration and persistence, social interaction, or adaption. Claimant had x-rays of her bilateral knees on [REDACTED]. The x-rays documented degenerative findings involving the right and left knee joints. Claimant was seen by her treating family physician on [REDACTED]

[REDACTED]. Progress notes on that date were as follows:

“Patient fell on her knees in [REDACTED] and was seen here; had x-rays and was given a pain medicine. Patient here for follow up.

Patient is limping less, but she is still experiencing some pain at the front of the knee especially when going upstairs.”

The treating physician opined that claimant suffers from diabetes, obesity, hypertension, arthritis, and bilateral knee tendonitis. The physician indicated that claimant’s clinical condition was stable. He provided no limitations with regard to lifting, sitting, standing, or walking. The physician indicated that claimant was capable of repetitive activities with the right lower extremity and capable of simple grasping and fine manipulation with the bilateral upper extremities. The physician indicated that there were no mental limitations. At the hearing, claimant testified that she performs her own household chores and uses a bus for transportation.

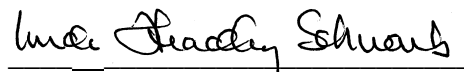
When asked if there was anything she could not do or needed help with, claimant responded that she needed assistance going up stairs. Claimant reported that she spends most of her day reading. It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical findings, as well as claimant's own testimony as to her ability to function in her home and the community, that claimant is capable of her past work as a security guard. Accordingly, claimant may not be found to be 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). In this case, there is insufficient medical evidence to support a finding that claimant is incapacitated or unable to work under SSI disability standards for at least 90 days. Therefore, the undersigned finds that claimant is not presently 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 the Department of Human Services properly determined that claimant is not "disabled" for purposes of the Medical Assistance and State Disability Assistance programs.

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: June 21, 2010

Date Mailed: June 21, 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:

