

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2010-3572
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: December 16, 2009
DHS County: Wayne (76)

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 16, 2009. Claimant appeared and testified. Claimant was represented by [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) 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 17, 2008, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to July of 2008.
2. On May 29, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
3. On August 26, 2009, a hearing request was filed to protest the department's determination.
4. Claimant, age 52, has a high-school education and one year of college.

5. Claimant last worked in 2006 as a manager of a [REDACTED]. Claimant has had no other relevant work experience.
6. Claimant has a history of a cerebral vascular accident in [REDACTED].
7. Claimant was hospitalized [REDACTED] following complaints of fatigue. She was diagnosed with generalized fatigue secondary to anemia due to fibroid uterus and menorrhagia. Claimant has had no other hospitalizations.
8. Claimant currently suffers from anxiety disorder NOS, nicotine dependence, dependent personality trait, and history of cerebral vascular accident with complete recovery.
9. Claimant has severe limitations upon her ability to respond appropriately to others and deal with change. Claimant's limitations have lasted twelve months or more.
10. 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, at the very least, has the physical and mental capacity to engage in simple, unskilled light work activities 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 (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, 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 mental limitations upon her ability to perform basic work activities such as 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).

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 medical evidence and objective, physical and psychological findings, that claimant is capable of her past work activities. Thus, even if claimant were to be found incapable of relevant past work, she would still be found capable of performing other work.

In the fifth 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 other work. 20 CFR 416.920(f). This determination is based upon the claimant’s:

- (1) residual functional capacity defined simply as “what can you still do despite you limitations?” 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS*, 161 Mich. App 690, 696 (1987).

This Administrative Law Judge finds that claimant's residual functional capacity for work activities on a regular and continuing basis does include the ability to meet the physical and mental demands required to perform simple, unskilled light work. Light work is defined as follows:

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Objective medical evidence, signs, and symptoms as well as the hearing record as a whole, support a determination that claimant is capable of performing the physical and mental activities necessary for light work activities. In this case, claimant has a history of a cerebral vascular accident in [REDACTED]. On [REDACTED], claimant was hospitalized as a result of complaints of fatigue. She was diagnosed with generalized fatigue secondary to anemia due to fibroid uterus and menorrhagia. Claimant has had no further hospitalizations. Claimant was evaluated by a consulting internist for the department on [REDACTED]. The consultant provided the following impression:

Fine and gross dexterity is intact. The patient is right handed. There is no evidence of sensory changes or atrophy. She has good hand grip bilaterally and pinch strength. She is right handed.

Osteoarthritis and spinal disorder – the patient has no joint deformity or enlargement. There is no evidence of effusion or contracture of any joint. She has normal gait and stance. There is some limitation for squatting but otherwise straight leg raising is satisfactory. No circulatory deficits. Grip and pinch strength are satisfactory. Her gait was unaided.

Ambulation – the patient ambulated very well without any ambulation aid. She has good hand grip bilaterally. She managed to get on and off the examination table. Squatting was about 50% with recovery. She managed to do tandem walk. Straight leg raising was about 75% bilaterally.

CVA – so far the patient seems to have had transient ischemic attack or a small lacunar infarct and has recovered from that completely. The only sign, which can be elicited, is hyper reflexia on the right side of the body but there is no lateralization and the speech was fluent without abnormalities.

Claimant was seen by a consulting psychiatrist for the department on [REDACTED]. The consultant diagnosed claimant with anxiety disorder, NOS; nicotine dependence; and dependent personality trait. The consultant opined that claimant had no marked limitations in any category of understanding and memory, sustained concentration and persistence, social interaction, or adaption. At the hearing, claimant testified that she has been seeking employment since March of 2009.

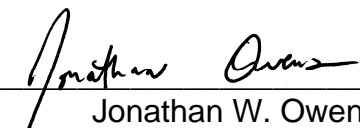
After careful review of the entire hearing record, the undersigned finds that the record does not establish limitations which would compromise claimant's ability to perform a wide range of light work activities on a regular and continuing basis. The record does not support the position that claimant is incapable of light work activities.

Considering that claimant, at age 52, is closely approaching advanced age, has a high-school education with one year of college, has an unskilled work history, and has a sustained work capacity for light work activities, the undersigned finds that claimant's impairments do not prevent her from engaging in other work. As a guide see 20 CFR, Part 404, Subpart P, Appendix 2, Table 2, Rule 202.10. Accordingly, the undersigned must find that claimant is not presently disabled for purposes of the MA 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 program.

Accordingly, the department's determination in this matter is hereby affirmed.



Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 14, 2010

Date Mailed: December 14, 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.

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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.

JWO/pf

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