

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.: 2010-37878  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date: July 28, 2010  
DHS County: Wayne (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 July 28, 2010. 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 November 19, 2009, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to August of 2009.
2. On March 18, 2010, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
3. On May 28, 2010, a hearing request was filed to protest the department's determination.
4. Claimant, age 57, has a high-school education.

5. Claimant last worked in 2006 as a food service employee. Claimant has also performed relevant work as a child care provider and as a cashier. Claimant's relevant work history consists exclusively of unskilled work activities.
6. Claimant has a history of hypertension, gastritis, and carpal tunnel syndrome with surgery.
7. Claimant was hospitalized [REDACTED]. Her discharge diagnosis was altered mental status, resolved; polypharmacy; history of chronic backache; history of depression; chronic kidney disease; hypertension; and anemia of chronic kidney disease.
8. Claimant was hospitalized [REDACTED]. Her discharge diagnosis was acute renal failure, urinary tract infection, rhabdomyolysis, altered mental status, myalgia and myositis, hypertensive chronic kidney disease, chronic kidney disease (Stage 3), depression, hypokalemia, obesity, convulsions, mononeuritis, syncope and collapse, and fibromyalgia.
9. Claimant was hospitalized [REDACTED]. She was diagnosed with change in mentation, seizures, chronic pain with multiple pain medications, substance abuse and narcotic abuse history, depression, and chronic back pain.
10. Claimant currently suffers from hypertension, hyperlipidemia, obesity, fibromyalgia, renal insufficiency, syncope, chronic lumbar pain, right wrist carpal tunnel syndrome, and major depressive disorder.
11. Claimant has severe limitations upon her ability to walk, stand, lift, push, pull, reach, carry, and handle as well as limitations with regard to memory, judgment, ability to respond appropriately to others, and ability to deal with change. Claimant's limitations have lasted or are expected to last twelve months or more.
12. 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 is so impaired as to be incapable of engaging in any substantial gainful activity 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 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 (6<sup>th</sup> 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 and mental limitations upon her ability to perform basic work activities such as walking, standing, lifting, pushing, pulling, reaching, carrying, or handling; understanding, carrying out, and remembering simple instructions; 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 not capable of the walking, standing, lifting, carrying, or personal interaction required by her past employment. Claimant has presented the required medical data and evidence necessary to support a finding that she is not, at this point, capable of performing such 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). Once claimant reaches Step 5 in the sequential review process, claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6<sup>th</sup> Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that the claimant has the residual functional capacity for substantial gainful activity.

In this case, claimant has a history of fibromyalgia, chronic low back pain, and depression. Claimant was hospitalized in [REDACTED] when she was found to be very sleepy and hypoxia secondary to multiple medications. She was re-hospitalized in [REDACTED] for acute renal failure, urinary tract infection, rhabdomyolysis, and altered mental status. Claimant was found to have hypertensive chronic kidney disease as well as chronic kidney disease, Stage 3. Claimant was re-hospitalized in [REDACTED] for changes in mentation thought to be secondary to her pain medications for chronic pain. Claimant was seen by a consulting internist for the department on [REDACTED]. The consultant diagnosed claimant with obesity; hypertension; chronic lumbar pain; history of carpal tunnel syndrome affecting the right hand; history of anxiety and depression; and gastritis. On [REDACTED], claimant's treating internist diagnosed claimant with hyperlipidemia, anxiety, renal insufficiency, fibromyalgia, borderline diabetes mellitus, carpal tunnel syndrome, and disc bulging. The treating internist opined that claimant was limited to sitting less than six hours in an eight-hour work day and incapable of pushing/pulling with the bilateral upper extremities. The internist noted that claimant had limitations with comprehension, memory, sustained concentration, and reading/writing. On [REDACTED], claimant's treating internist diagnosed claimant with fibromyalgia, renal insufficiency, syncope, anxiety, back pain, and right wrist carpal tunnel syndrome. The internist opined that claimant was limited to lifting less than ten pounds on an occasional basis and limited to standing and walking less than two hours in an eight-hour work day. The treating internist found that claimant was incapable of reaching, pushing/pulling, and fine manipulation with the bilateral upper extremities and incapable of operating foot or leg controls with the bilateral lower extremities. The physician continued to note limitations with memory and sustained concentration. On [REDACTED], claimant's treating psychiatrist from the Guidance Center diagnosed claimant with major depressive disorder. The treating psychiatrist found claimant to be markedly limited with regard to her ability to respond appropriately to change in a work setting. He found her to be moderately limited with regard to the ability to ask simple questions or request assistance, the ability to set realistic goals or make plans independently of others, and all categories of understanding and memory as well as sustained concentration and persistence.

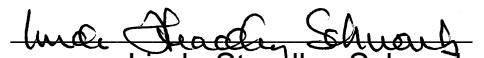
After careful review of claimant's extensive medical record and the Administrative Law Judge's personal interaction with claimant at the hearing, this Administrative Law Judge finds that claimant's exertional and non-exertional impairments render claimant unable to engage in a full range of even sedentary work activities on a regular and continuing

basis. 20 CFR 404, Subpart P, Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The department has failed to provide vocational evidence which establishes that claimant has the residual functional capacity for substantial gainful activity and that, given claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which the claimant could perform despite claimant's limitations. Accordingly, this Administrative Law Judge concludes that claimant is 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 claimant meets the definition of medically disabled under the Medical Assistance program as of August of 2009.

Accordingly, the department is ordered to initiate a review of the November 19, 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 and her authorized representative 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 September of 2011.

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

Date Signed: September 15, 2010

Date Mailed: September 16, 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.

LSS/pf

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