

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.: 2010-39512
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: August 5, 2010
DHS County: Macomb (12)

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 August 5, 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 May 8, 2009, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to February of 2009.
2. On June 1, 2010, claimant's authorized representative filed a hearing request to protest the department's failure to provide requested benefits.
3. On June 18, 2010, the department formally denied claimant's application based upon the belief that claimant did not meet the requisite disability criteria.
4. Claimant, age 36, has a high-school education.

5. Claimant last worked in 2008 as a bartender. Claimant has also performed relevant work as a waitress and direct care worker in a group home. Claimant's relevant work history consists exclusively of unskilled work activities.
6. Claimant has a history of bipolar disorder and anxiety.
7. Claimant received emergency room treatment on [REDACTED], as a result of a pilonidal cyst.
8. Claimant was hospitalized [REDACTED] as a result of an abscess on her right thigh. Her discharge diagnosis was abscess of medial aspect of right thigh, anxiety, and depression.
9. Claimant was hospitalized [REDACTED]. Her discharge diagnosis was acute liver failure (secondary to Vicodin overdose); aspiration pneumonia, sepsis, and acute renal failure.
10. Claimant was hospitalized at [REDACTED] on [REDACTED] and transferred to [REDACTED] on [REDACTED], for treatment of bipolar disorder and generalized anxiety disorder. Claimant's discharge diagnosis from [REDACTED] [REDACTED], was bipolar disorder, depressed and general anxiety disorder.
11. Claimant currently suffers from bipolar disorder and generalized anxiety disorder.
12. Allegations concerning claimant's impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, do not reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity for a continuous period of not less than twelve months.

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).

At the second step of the sequential consideration, the trier of fact must determine if claimant has a severe impairment which meets the durational requirement. Unless an impairment is expected to result in death, it must have lasted or be expected to last for a continuous period of at least twelve months. 20 CFR 416.909. In this case, claimant had an emergency room visit in [REDACTED] for a cyst. She was an in-patient from [REDACTED] for an abscess on her right thigh. Per her testimony at the hearing, claimant's infection on her thigh healed up by [REDACTED]. Claimant was re-hospitalized in [REDACTED] for liver failure secondary to Vicodin overdose. Following her hospitalization from [REDACTED] claimant was treated at [REDACTED] and transferred to [REDACTED] on [REDACTED]. At discharge on [REDACTED], claimant was diagnosed with bipolar disorder and generalized anxiety disorder. The medical record contains no additional documentation following claimant's [REDACTED] discharge from [REDACTED]. Claimant testified at the hearing that she had a seizure in [REDACTED]. Claimant testified that she has no physical limitations other than her inability to drive because of the seizure. With regard to current complaints, claimant testified that she suffers from depression, anxiety, and memory problems. No additional medical documentation was provided in support of claimant's limitations.

A careful review of the entire record indicates a lack of support for a finding that claimant has limitations which have resulted in the inability to perform any substantial gainful activity for a continuous period of not less than twelve months. The record fails to provide required medical data and evidence necessary to support a finding that claimant has or had an impairment which has or will prevent the performance of substantial gainful activity for the twelve-month durational requirement. Accordingly, the undersigned finds that the department has properly determined that claimant is not eligible for MA-P based upon disability. Even if claimant was able to establish that she has a severe impairment as a result of her mental status, claimant 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, that the medical evidence and objective, physical and psychological findings do not support a finding that claimant is incapable of past work activities. But, even if claimant were incapable of performing past relevant 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 demands required for simple, unskilled work activities. Unskilled work is defined as follows:

Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. For example, we consider jobs unskilled if the primary work duties are handling, feeding and offbearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are needed.

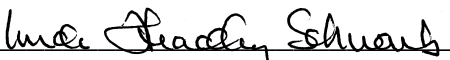
Objective medical evidence, signs, and symptoms as well as the hearing record as a whole, support a determination that claimant is capable of performing the physical and mental activities necessary for a wide range of simple, unskilled work activities. Claimant herself testified at the hearing that she has no physical limitations other than her inability to drive because of her alleged [REDACTED] seizure. Claimant complained that she suffers from depression, anxiety, and memory problems. Claimant reported

that she has a treating psychiatrist and that she takes medication for her condition. Despite being given an opportunity to do so, claimant did not provide any documentation from a treating psychiatrist. When asked if there was anything that she could not do or needed help with, claimant responded with "not really." After careful consideration of the entire hearing record, the undersigned finds that the record will not support the position that claimant is incapable of simple, unskilled work activities. Accordingly, the department's determination that claimant is not "disabled" for purposes of MA-P must be upheld.

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: October 20, 2010

Date Mailed: October 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.

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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

cc:

