

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.: 2010-43866
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: August 30, 2010
DHS County: Macomb (36)

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 30, 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) 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 9, 2008, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to April of 2008.
2. On June 9, 2010, the Medical Review Team denied claimant's application via a Facility Admission Notice.
3. On June 21, 2010, a hearing request was filed to protest the department's determination.
4. Claimant, age 41, has an eleventh-grade education.
5. Claimant's last relevant work was performed in 1993 as a machine operator. Claimant's relevant work history consists exclusively of unskilled work activities.

6. Claimant has a history of obesity, diabetes mellitus, chronic obstructive pulmonary disease, and a motor vehicle accident in [REDACTED] resulting in multiple fractures and a closed-head injury.
7. Claimant was hospitalized [REDACTED] as a result of right lower extremity cellulitis, evaluation for deep venous thrombosis, leukocytosis, and uncontrolled diabetes mellitus.
8. Claimant was re-hospitalized [REDACTED] with a discharge diagnosis of pneumonia; asthma, with history of chronic obstructive pulmonary disease; overweight; history of diabetes mellitus; pain in the joints of the lower legs; and personal history of tobacco use.
9. Claimant currently suffers from obesity, chondromalacia of the bilateral knees, diabetes mellitus, hypertension, recurrent major depression, and panic disorder with agoraphobia. In [REDACTED], claimant had a GAF score of 46.
10. Claimant has severe limitations upon her ability to walk, stand, and lift heavy objects as well as limitations with memory, use of judgment, responding appropriately to others, and dealing with change. Claimant's limitations have lasted or are expected to last twelve months or more.
11. 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 (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 and mental limitations upon her

ability to perform basic work activities such as walking, standing, and lifting; understanding, carrying out, and remembering simple instructions; use of judgment; 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.

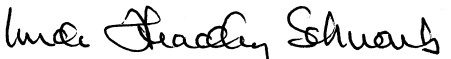
In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. After careful consideration of the entire hearing record, the undersigned must find that claimant's impairment meets or equals a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A, Section 12.04. Claimant suffers from a number of physical maladies, such as obesity, chondromalacia of the bilateral knees, diabetes mellitus, and hypertension. She also has a history of depression. When hospitalized in [REDACTED], a consulting psychiatric evaluation resulted in a diagnosis of major depression recurrent; mood disorder secondary to morbid obesity and eating disorder, not otherwise specified; and adjustment disorder with anxiety and depression. Claimant was given a current GAF score of 20. On [REDACTED], claimant was evaluated by a consulting psychiatrist for the department. The consultant diagnosed claimant with panic disorder with agoraphobia, dysthymic disorder, and rule out social anxiety disorder. The consultant gave claimant a current GAF score of 46 and opined that claimant was moderately to markedly limited in nearly every area of understanding and memory, sustained concentration and persistence, social interaction, and adaptation. The record supports the finding that claimant has had a medically documented persistence of a depressive syndrome which has been characterized by anhedonia or pervasive loss of interest in almost all activities; sleep disturbance; decreased energy; and difficulty concentrating or thinking. This has resulted in marked restrictions of activities of daily living; marked difficulties in maintaining social functioning; and marked difficulties in maintaining concentration, persistence, and pace. Accordingly, the undersigned must find that claimant's depressive syndrome meets or equals a listed impairment. Accordingly, the undersigned finds that claimant is 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 claimant meets the definition of medically disabled under the Medical Assistance program as of April of 2008.

Accordingly, the department is ordered to initiate a review of the May 9, 2008, 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 Schwarb
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 7, 2010

Date Mailed: September 7, 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:

