

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.: 2010-7548  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
February 4, 2010  
Oakland County DHS (02)

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 February 4, 2010. 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 September 15, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On September 30, 2009, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 39, has a high-school education.
- 5) Claimant last worked in July of 2008 as an administrative assistant.
- 6) Claimant was hospitalized [REDACTED]. Claimant was a non-restrained passenger in a motor vehicle accident with airbag deployment. Claimant suffered severe facial trauma, upper lip amputation, missing teeth, facial fractures, mandibular deformity, and distended neck. Claimant underwent surgical re-attachment of her upper lip.
- 7) Claimant currently suffers from bipolar disorder, depressed; generalized anxiety disorder; attention deficit disorder; and alcohol abuse in remission. Claimant's GAF score in [REDACTED] was 30.
- 8) Claimant suffers from an affective disorder characterized by a disturbance of mood accompanied by a depressive syndrome. Claimant suffers from difficulty concentrating and thinking, sleep disturbance, and decreased energy. This has resulted in marked difficulty maintaining social functioning and marked difficulty maintaining concentration, persistence, and pace.

#### 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 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 from 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.

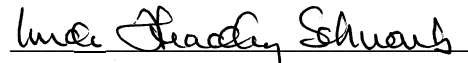
In this case, claimant has presented the required medical data and evidence necessary to support a finding that she has significant mental limitations upon her ability to perform basic work activities such as understanding, carrying out, and remembering simple instructions; use of judgment; responding 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. Based upon claimant's diagnosis and a careful review of the hearing record, the undersigned must find that claimant's impairments meet or equal a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A, Section 12.04A(1) and (B). On [REDACTED], claimant's treating psychiatrist at [REDACTED] diagnosed claimant with major depressive disorder, recurrent episode, generalized anxiety disorder, and alcohol abuse. On [REDACTED] claimant's treating psychiatrist at [REDACTED] indicated that claimant "has trouble with anxiety and depressive symptoms which affect her ability to function appropriately..." The psychiatrist found claimant to be moderately to markedly limited in most areas of understanding and memory, sustained concentration and persistence, social interaction, and adaption. On [REDACTED], claimant was seen by a consulting psychologist for the [REDACTED]. The consultant diagnosed claimant with major depressive disorder, recurrent, severe without psychotic features; bulimia nervosa, purging type; alcohol dependence in sustained full remission; rule out generalized anxiety disorder; and features obsessive compulsive disorder. Claimant was given a GAF score of 46 and her symptoms were described as severe and persistent. On [REDACTED], claimant's treating psychiatrist diagnosed claimant with bipolar disorder, depressed; generalized anxiety disorder; attention deficit disorder; and history of alcohol, in remission. Claimant was given a current GAF score of 30. After careful review of the entire hearing record, the undersigned finds that claimant meets or equals a listing. Accordingly, claimant must be found "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 July of 2008.

Accordingly, the department is ordered to initiate a review of the October 17, 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 December of 2010.

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

Date Signed: May 12, 2010

Date Mailed: May 17, 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:

