

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: 200713851  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
December 6, 2007  
Oakland County DHS

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 6, 2007. The Claimant appeared and testified. The Claimant was represented by his attorney [REDACTED]

The record was left open for submission of additional medical records. The Claimant, his attorney and the Department were sent a letter on July 14, 2009 regarding the records. To date no additional records were received.

ISSUE

Whether the department properly determined the claimant is not "disabled" for purposes of the Medical Assistance (MA) program?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as a material fact:

1. On February 16, 2007 the Claimant applied for MA-P and retro MA.
2. On March 28, 2007 MRT denied the Claimant's request.
3. On April 3, 2007 the Claimant submitted to the Department a request for hearing.
4. The Claimant was 63 years old as of the hearing date.
5. The Claimant completed schooling up through a Juris Doctorate.
6. The Claimant has employment experience as an attorney.
7. The Claimant's limitations have not lasted for 12 months or more.
8. The Claimant was diagnosed with diverticulitis.

#### 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 400.1 *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 impairment(s); residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. A determination that an individual is disabled can be made at any step in the sequential evaluation. Then 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, under the first step, claimant is working. The Claimant testified he is working. The Claimant completed a DHS 49 B and indicated he was working 5-10 hours a week and earned \$833 a month. The Claimant is not disqualified for MA at step one in the evaluation process since he is below the SGA earnings for a month.

Second, 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 mean the abilities and aptitudes necessary to do most jobs. Examples 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. The court in *Salmi v Sec'y of Health and Human Servs*, 774 F2d 685 (6<sup>th</sup> Cir 1985) held that an impairment qualifies as “non-severe” only if it “would not affect the claimant’s ability to work,” “regardless of the claimant’s age, education, or prior work experience.” *Id.* At 691-92. Only slight abnormalities that minimally affect a claimant’s ability to work can be considered non-severe. *Higgs v Bowen*, 880 F2d 860, 862 (6<sup>th</sup> Cir. 1988); *Farris v Sec'y of Health & Human Servs*, 773 F2d 85, 90 (6<sup>th</sup> Cir 1985).

In this case, the claimant has presented medical data which indicates the Claimant did in fact have a severe impairment. The Claimant underwent treatment in January 2007 for diverticulitis which resulted in a colostomy. The Claimant’s treating physician indicated the Claimant would be unable to work for a several weeks in a letter dated February 5, 2007. (Exhibit 10) On February 26, 2007 this same physician indicated the Claimant would be unable to work more than 2-3 hours a day. (Exhibit 9) On March 7, 2007 this same physician completed a DHS 49 indicating the Claimant could lift 10lbs frequently, stand and/or walk 2 hours in an 8 hour period and sit less than 6 hours in an 8 hour work day. This physician indicated the Claimant was also limited in the area of sustained concentration. All areas of the examination were found to be in the normal range except for abdominal area. The Claimant had presented no medical evidence to indicate current condition or restrictions. The record was extended to allow the Claimant and his attorney time to present additional medical documentation. To date no additional

medical information was received for consideration. According to the medical records in the file the Claimant's condition was expected to improve and appeared to be improving within 3 months of his surgery.

The medical evidence submitted has established that claimant had an impairment (or combination of impairments) that has an effect on claimant's work activities. However the undersigned finds the medical records do not establish that claimant's impairments have lasted a continuous and consecutive twelve month period. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929.

Your impairment(s) must be severe and meet the duration requirement before we can find you to be disabled. We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education, and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further. 20 CFR 916.920(a).

Unless your impairment is expected to result in death, it must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909. The undersigned finds claimant's impairments have not met the duration requirement of 20 CFR 416.909. SSR 82-52 provides in part:

Denial for insufficient duration is applicable in all cases in which:

1. The impairment(s) was or is of such severity that the claimant was or is unable to engage in any SGA (substantial gainful activity or any gainful activity); but
2. By the end of 12 months, the impairment is, or will be, no longer of such severity as to prevent SGA.

DECISION AND ORDER

This Administrative Law Judge, based on the findings of fact and conclusions of law, decides that the claimant is not “disabled”.

Accordingly, department decision in this matter is AFFIRMED.

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

Date Signed: 9/29/09 \_\_\_\_\_

Date Mailed: 9/29/09 \_\_\_\_\_

**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 receipt 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.

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