

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. 2007-17519
Issue No. 2009
Case No: [REDACTED]
Load No. [REDACTED]
Hearing Date:
October 24, 2007
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Judith Ralston Ellison

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 October 24, 2007. The Claimant appeared at the Department of Human Services (Department) in Wayne County District 82.

The closure date was waived to obtain additional medical information. An Interim Order was issued for recent medical records and Independent Medical exam; and subsequently resend at a later date. No new medical records were received; and the record closed. This matter is now before the undersigned for final decision.

ISSUES

Whether the Department properly determined the Claimant is "not disabled" for purposes of Medical Assistance (MA-P) and retroactive MA-P programs?

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 March 2, 2007 the Claimant applied for MA-P and retroactive MA-P; and State Disability Assistance (SDA); and was awarded SDA benefits.

(2) On April 25, 2007 the Department denied the application after the Claimant failed to appear for a medical evaluation scheduled in [REDACTED]; and on October 1, 2007 the SHRT denied the applications finding the impairment had improved and did not meet the duration requirement of 20 CFR 416.909.

(3) On May 8, 2007 the Claimant filed a timely hearing request to protest the Department's determination.

(4) Claimant's date of birth is [REDACTED]; and the Claimant was thirty-nine years of age at the time of hearing.

(5) Claimant completed grade 12 and two and one-half years of college classes; and can read and write English and perform basic math skills.

(6) Claimant last worked in [REDACTED] doing childcare for the [REDACTED]; and prior drove semi-trucks and self-employment in home improvement and was [REDACTED] security.

(7) Claimant has a medical history of headaches after a [REDACTED] head injury and coma for five days, seizures, hypertension and depression.

(8) [REDACTED], in part:

Date of admission [REDACTED]; and discharged [REDACTED]

DISCHARGE DIAGNOSES: Status post acute burr hole evacuation of subdural hematoma. Status post external ventricular drain and Camino monitor. History of aspiration pneumonia status post bronchoscopy. History of hypertension. History of respiratory failure. History of substance abuse with acute alcohol intoxication on admission.

HOSPITAL COURSE: No significant past medical history admitted after mental status changes and unresponsive. Combative on arrival. Several procedures were performed to treat subdural hematoma, aspiration pneumonia and mental status changes. Post

operatively continued to do well. External ventricular drain was removed. Currently on regular floor, ambulating well, tolerating PO. PEG tube still in but not in use but remain in for two weeks. Ready for discharge and will be discharged home in good condition with explicit instructions to follow up with [REDACTED] for repeated CT scan brain. No heavy activity, no driving, no alcohol, no tobacco, no illicit drug use. [REDACTED]. Department Exhibit 1, pp. 7-34.

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 CFR416.905

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 (SGA). 20 CFR 416.920(b). In this case, under the first step, at hearing, the Claimant testified to not performing SGA since [REDACTED]. Therefore, Claimant is not disqualified from MA at step one in the evaluation process.

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 (6th 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 (6th Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F2d 85, 90 (6th Cir 1985).

In this case, the Claimant has presented medical evidence of treatment for subdural hematoma complicated by aspiration pneumonia in [REDACTED]. At hearing on October 2007, the claimant alleged headaches, head injury, depression and seizures. But no subsequent medical records confirming by appropriate medical testing/confirmation were submitted. Thus, the undersigned finds the Claimants impairment has not met the duration requirement of 20 CFR 416.909.

Based on lack of medical evidence that the Claimant is unable to perform basic work activities after [REDACTED], the undersigned finds the Claimant condition is not severe within the meaning of 20 CFR 416.920(c).

Your impairment(s) must be severe and meet the duration requirement before we can find you to be disabled. You must have a severe impairment. If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider 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 916.920a(5)(c).

It is the finding of the undersigned, based upon the medical data and hearing record, that the Claimant is “not disabled” at step two because the Claimant does not have medical documentation of physical or mental impairments that are severe enough to prevent basic work activities; and missed a medical consultation in [REDACTED]. Further review of the claim is not necessary.

DECISION AND ORDER

The Administrative Law Judge, based on the findings of fact and conclusions of law, decides that the Claimant is “not disabled” for purposes of the Medical Assistance and retroactive Medical Assistance programs.

It is ORDERED; the Department’s determination in this matter is AFFIRMED.

/s/

Judith Ralston Ellison
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: February 9, 2009

Date Mailed: February 11, 2009

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.

JRE

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