

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: 2007-19135

Issue No: 2009

Case No:

Load No:

Hearing Date:

September 12, 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 September 12, 2007. The Claimant did not appear. The representative, [REDACTED] appeared at the Department of Human Services (Department) in Wayne County.

The record was left open to obtain additional medical information from the representative. No additional medical evidence was submitted. 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 based on disability (MA-P) and retroactive MA-P for May, June and July 2006 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 August 3, 2006 the Claimant applied for MA-P retroactive MA-P.
- (2) On December 11, 2006 the Department denied the application; and on July 23, 2007 the State Hearing Review Team denied the application because of insufficient medical records.
- (3) On March 1, 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 is forty-five years of age.
- (5) Claimant completed grade 12. Department Exhibit (DE) 1, p. 8.
- (6) Claimant's work history includes temporary housekeeping and kitchen work to 2004. DE 1, p. 8.
- (7) Claimant has alleged a medical history of diabetes and anemia.
- (8) [REDACTED], in part:

FINAL DIAGNOSES: Cellulitis and abscess of left breast. New-onset diabetes mellitus. Anemia. Morbid obesity. Dysmenorrhea.

DISCHARGE; After several days of surgeries and medical management, the patient's overall condition improved. GYN will follow for uterine fibroids. Discharged to home with medications and to follow up with [REDACTED] in two weeks. [REDACTED]
DE 1, pp. 9-10.

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, the Claimant was not present at the hearing September 12, 2007. No independent reliable evidence of the Claimant’s current SGA was submitted. Whether the Claimant was engaged in SGA at any time from 2004 to September 12, 2007 was not possible to determine due to lack of evidence. At step one, it is the Claimant’s burden to provide evidence that she is not engaged in SGA. Without more evidence the Claimant can not be determined to be eligible for MA-P at step one.

The undersigned finds that based on the Claimant's failure to appear and testify at the hearing September 12, 2007, a determination of eligibility or ineligibility due to SGA cannot be made. The Claimant is found "not disabled" at step one.

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 programs.

It is ORDERED the Department's decision is AFFIRMED.

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

Date Signed: March 9, 2009

Date Mailed: March 13, 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/jlg

cc:

