

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: 2007-28020  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
April 23, 2008  
Wayne County DHS

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 April 23, 2008. Claimant appeared and testified. 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 April 24, 2007, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to February of 2007.

(2) On May 9, 2007, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.

(3) On August 7, 2007, the hearing request was filed to protest the department's determination.

(4) Claimant, age 48, has an 11<sup>th</sup> grade education.

(5) Claimant last worked in 2003 as a shipping and receiving clerk. Claimant has had no other relevant work experience.

(6) Claimant has a history of polysubstance abuse, hypertension, and asthma.

(7) Claimant was hospitalized [REDACTED] as a result of calculus of the kidney and hydronephrosis. Claimant underwent a cystoscopy and stent placement.

(8) Claimant was hospitalized [REDACTED] for recurrent pyelonephritis. Claimant's urethral stent was replaced.

(9) Claimant was hospitalized [REDACTED] for recurrent pyelonephritis secondary to renal calculi with failure of ciprofloxacin and bilateral renal calculi.

(10) Claimant was hospitalized [REDACTED] for acute pyelonephritis and nephrolithiasis and NOS.

(11) Claimant was hospitalized [REDACTED]. She underwent a cystoscopy, flexible left ureteroscopy, and laser lithotripsy.

(12) Claimant was hospitalized [REDACTED] for pain and urinary tract infection. She was treated conservatively, improved, and was discharged with antibiotics.

(13) The allegations concerning claimant's impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, does not reflect an individual who was so impaired as to be incapable of engaging in any substantial gainful activity for a continuous period of not less than 12 months.

#### 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 general, claimant has the responsibility to prove that she is disabled. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

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 eliminated from MA at this step in the sequential evaluation process.

Secondly, the trier of fact must determine if claimant has a severe impairment which met the durational requirement. Unless an impairment is expected to result in death, it must have lasted or be expected to last for a continuous period of at least 12 months. 20 CFR 416.909.

In this case, claimant suffered from recurrent pyelonephritis secondary to renal calculi. Unfortunately, she had numerous hospitalizations to address that problem. The hearing record does not support a finding that claimant's condition caused a continuous period of disability lasting 12 months or more. On [REDACTED], claimant's treating urologist, [REDACTED] diagnosed claimant with acute left pyelonephritis. The physician indicated that claimant had a temporary disability and that her limitations would not be expected to last more than 90 days. At that point, the treating neurologist indicated that claimant was capable of occasionally lifting up to 25 pounds and capable of frequently lifting up to 10 pounds. The urologist indicated that claimant had no limitations with regard to her ability to engage in repetitive activities with the upper and lower extremities and did not indicate that claimant had any limitations with standing, walking, or sitting. The treating urologist further indicated that claimant had no mental limitations. There is nothing in the hearing record to suggest that claimant had limitations which resulted in the inability to do any substantial gainful activity for a continuous period of not less than 12 months. Accordingly, the undersigned must find that the department properly determined that claimant is not eligible for MA based upon disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant is not "disabled" for purposes of the Medical Assistance program.

Accordingly, the department's determination in this matter is hereby AFFIRMED.

/s/ \_\_\_\_\_  
Linda Steadley Schwarb  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: March 3, 2009

Date Mailed: March 5, 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.

LSS/tg

cc:

[REDACTED]