

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.: 2008-17063
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
January 12, 2009
Wayne County DHS (73)

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 January 12, 2009. Claimant was unable to participate in the hearing due to his incarceration. Claimant was represented by [REDACTED] of [REDACTED]. Following the hearing, the record was kept open for the receipt of additional medical evidence. No additional documents were submitted.

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) and State Disability Assistance (SDA) 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 October 30, 2006, an application was made on claimant's behalf for MA-P and SDA benefits. The application did not request retroactive medical coverage.
- 2) On January 9, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On March 27, 2008, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 47, has an eleventh-grade education with a GED.
- 5) Claimant's last date of employment is unknown. He has apparently worked as a hi-lo operator and as an assistant grocery store manager.
- 6) Claimant has a history of hypertension, hepatitis C, coronary artery disease, alcohol and polysubstance abuse, and seizure disorder secondary to head trauma in [REDACTED].
- 7) Claimant was hospitalized [REDACTED] as a result of chest pain. Myocardial infarction was ruled out. His discharge diagnosis was chest pain, atypical, myocardial infarction ruled out; hepatitis C; hypertension; seizure disorder; coronary artery disease; and alcohol abuse.
- 8) Claimant had emergency room treatment on [REDACTED], as a result of break-through seizure secondary to non-compliance with medication and left ankle soft tissue injury. Secondary diagnoses included hepatitis C, hypertension, and coronary artery disease.
- 9) Claimant was hospitalized [REDACTED] following a motor vehicle accident. Upon admission, claimant was found to be intoxicated. His discharge diagnosis was right femur and tibial plateau fractures status post right

femur intramedullary nailing, right tibia open reduction internal fixation, and alcohol intoxication.

- 10) Claimant sought emergency room treatment on [REDACTED], for right knee and right lower leg pain. He reported having engaged in “some work” when he felt a sudden pop in his right knee. His discharge diagnosis was acute exacerbation of right knee and right lower leg pain, status post right lower extremity fractures; history of right lower extremity hardware; and right lower extremity cellulitis.
- 11) Claimant was hospitalized [REDACTED], following a motor vehicle accident. Claimant reported using alcohol prior to driving. Claimant’s discharge diagnosis was closed head injury; left scapular fracture (non operative case); abrasion; seizure disorder; alcohol abuse; polysubstance abuse; and subtherapeutic dilantin (seizure medication).
- 12) Claimant received emergency room treatment on [REDACTED], while brought in police custody for complaints of abdominal pain. The final diagnosis was abdominal pain, no diagnosis and medication refill.
- 13) Claimant sought emergency room treatment on [REDACTED], with complaints of abdominal pain and diarrhea. The final diagnosis was bacterial gastroenteritis; possible colitis; and history of epilepsy.
- 14) Claimant sought emergency room treatment for a seizure on [REDACTED].
- 15) Claimant was hospitalized [REDACTED] as a result of primary and secondary burns to the scrotum.
- 16) Claimant suffers from hypertension, seizure disorder, coronary artery disease, hepatitis C, and alcohol/polysubstance abuse.

- 17) Claimant is capable of meeting the physical and mental demands associated with his past employment as an assistant manager of a grocery store as well as other forms of work on a regular and continuing basis, subject to the standard seizure cautions.

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 he 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 currently incarcerated. Therefore, claimant may not be disqualified for 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).

In this case, despite numerous hospitalizations, the record does not support a position that claimant has or had an impairment or functional limitation, lasting at least twelve months, that imposes a severe limitation upon claimant. Claimant has been diagnosed with a seizure disorder. Although claimant has established that he has an impairment, he has not met his burden of proof that he has an impairment that is severe or significantly limits his physical and mental ability to perform basic work activities necessary for most jobs. See Social Security Ruling 85-15, which provides that a person with seizure disorder who is restricted only from working around heights and near dangerous machinery does not have a non-exertional impairment that would significantly affect his ability to work. The hearing record has failed to support the position that claimant is incapable of basic work activities. See 20 CFR 416.927. Accordingly, this Administrative Law Judge concludes that the department properly determined that claimant is not entitled to MA based upon disability.

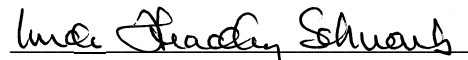
Even if claimant had a severe impairment, he clearly does not meet a listing (see listings 11.02 and 11.03) and he is still be capable of his past work activities as the assistant manager of a grocery store. Other than his seizure disorder, the hearing record does not support a finding that any of claimant's other medical conditions produce any functional limitations which impact upon claimant's ability to engage in work activities. There is nothing in the hearing record which would support a finding that claimant is incapable of his past work. Accordingly, the department's determination in this matter must be affirmed.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM Item 261. In this case, there is insufficient medical evidence to support a finding that claimant is incapacitated or unable to work under SSI disability standards for at least 90 days. Therefore, the undersigned finds that claimant is not disabled for purposes of the SDA program.

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 and State Disability Assistance programs. Accordingly, the department’s determination in this matter is hereby affirmed.


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

Date Signed: February 9, 2010

Date Mailed: February 12, 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.

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:

