

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: 2008-21505
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 2, 2008
Wayne County DHS (49)

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 October 2, 2008. Claimant appeared and testified. Claimant was represented by [REDACTED] of [REDACTED], Inc. 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 August 16, 2006, an application was filed on claimant's behalf for MA-P and SDA benefits. The application did not request retroactive medical coverage.
- (2) On July 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 October 2, 2007, a hearing request was filed to protest the department's determination.
- (4) Claimant, age 43, has a tenth grade education.
- (5) Claimant last worked in approximately [REDACTED] as a cook at [REDACTED]. In addition to working as a cook, claimant has also had relevant work experience washing and reconditioning cars at an auto dealership. Claimant's relevant work history consists exclusively as unskilled work activities.
- (6) Claimant has a history of alcohol abuse, closed head injury, and gun shot wound to the abdomen and chest (with no residuals).
- (7) Claimant was hospitalized [REDACTED] through [REDACTED] as a result of new onset seizures. At discharge, he was diagnosed with new onset seizure; mental status changes secondary to seizure versus ETOH withdrawal; unstable gait which improved during inpatient therapy; and questionable ETOH abuse.
- (8) Claimant was re-hospitalized [REDACTED] through [REDACTED] as a result of a seizure secondary to running out of his dilantin medication. Upon discharge, he was diagnosed with status epilepticus, on dilantin, no further work up necessary per neurology; left pneumonia, started on antibiotics; and low platelets secondary to heparin, platelets improved after discontinuing heparin.

- (9) At the hearing, claimant reported that he is receiving medical treatment as well as medications for his seizure condition.
- (10) Claimant only restriction or limitation with regard to work activities is the standard seizure precaution of no working around moving parts, working at heights, and the like. Other than adherence to the standard seizure precautions, claimant suffers from no significant restriction or physical limitations with respect to his ability to perform basic work activities.

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, the 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 not currently working. 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).

Claimant has been diagnosed with seizure disorder. He first developed seizures in [REDACTED]. He was hospitalized as a result of new seizure onset [REDACTED] through [REDACTED]. Mental status changes (possibly secondary to ETOH withdrawal) resolved as did problems with an unstable gait. A physician treating claimant during his hospitalization opined on [REDACTED], that claimant would be expected to return to work within 2 -4 weeks. The physician opined that claimant was capable of occasionally lifting up to 25 lbs. The physician indicated that claimant was capable of repetitive activities with the upper and lower extremities. Claimant was re-hospitalized [REDACTED] through [REDACTED] when he suffered a seizure secondary to running out of his dilantin medication. At discharge, claimant was advised to compliant with his medication. Claimant has established that he has an impairment. He testified that since [REDACTED], he has had 3 seizures. Claimant has not met his burden of proof that he has an impairment that is severe or significantly limits his physical or mental ability to perform basic work activities necessary for most jobs. See Social Security Ruling 85-15, which provides

that a person with a seizure disorder who is restricted only from working around heights and near dangerous machinery does not have a non-exertional impairment that would significantly effect his ability to work. The evidence has failed to support claimant's position that he is incapable of basic work activities. See 20 CFR 416.927. Accordingly, this Administrative Law Judge concludes that the department has properly determined that claimant is not entitled to MA based upon disability.

Even if claimant did establish that he had a severe impairment. He would still be capable of his past work or other work activities. At the hearing, claimant acknowledged that his primary limitation is his seizure disorder. He testified that he is capable of walking one mile, standing for one hour, sitting for "a couple of hours", and lifting 20 – 30lbs. Claimant reported that he has no problems with gripping or grasping with his hands and that he is capable of bending, squatting, and stooping. Claimant testified that he feels as though he is capable of his past work but questions whether he would be hired. The record does not support a finding that claimant has exertional or non-exertional limitations which would preclude him from engaging in his past work activities. Claimant is certainly capable of light work activities, subject to the standard seizure precautions, on a regular and continuing basis. Accordingly, the department's determination that claimant is not "disabled" for purposes of MA must be up held.

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.

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

Date Signed: 06/09/09

Date Mailed: 06/09/09

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.

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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/jlg

cc:

