

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: 2008-29244
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 24, 2008
Hillsdale County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 November 28, 2008. The Claimant appeared and testified.

ISSUE

Whether the department properly determined the claimant is not "disabled" for purposes of the Medical Assistance (MA) program?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as a material fact:

1. On June 8, 2008 the Claimant applied for MA-P.
2. On June 30, 2008 MRT denied the Claimant's request.
3. On August 8, 2008 the Claimant submitted to the Department a request for hearing.

4. The Claimant is 31 years old.
5. The Claimant completed schooling up through high school.
6. The Claimant has employment experience as a painter, cook, construction.
7. The Claimant's limitations have not lasted for 12 months or more.
8. The Claimant suffers from shoulder injury.
9. The Claimant testified he could work but is unable to find work.

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 CFR 416.905

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. 20 CFR 416.920(b). In this case, under the first step, claimant is not working. Therefore, claimant is not disqualified for 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 (6thCir 1985).

In this case, the claimant has presented medical data from his treating doctor indicating that claimant as of his exam on [REDACTED] was capable of occasionally lifting weight up to 10lbs and could stand or walk 6 hours in an 8 hour work day. The Claimant’s doctor did limit the use of his left shoulder. The indicated length of time believed by the doctor necessary to remove limitations was 3 to 6 months. The Claimant testified he was able to walk 2 miles comfortably, sitting, bending, and squatting were all possible for him. The Claimant mentioned he had tendonitis in his right hand but this according to his testimony was rarely a problem. The Claimant testified he had no mental problems other than depression but he testified he refused treatment for depression.

The medical evidence submitted has not established that claimant has a severe impairment (or combination of impairments) that has a severe effect on claimant’s work activities. The undersigned finds the medical records do not establish that claimant’s impairments have lasted a continuous and consecutive twelve month period. An individual’s subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CRF 416.908 and 20 CFR 416.929.

Your impairment(s) must be severe and meet the duration requirement before we can find you to be disabled. We follow a set order to determine whether you are disabled.

We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and 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 916.920(a).

Unless your impairment is expected to result in death, it must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909. The undersigned finds claimant's impairments have not met the duration requirement of 20 CFR 416.909. SSR 82-52 provides in part:

Denial for insufficient duration is applicable in all cases in which:

1. The impairment(s) was or is of such severity that the claimant was or is unable to engage in any SGA (substantial gainful activity or any gainful activity); but
2. By the end of 12 months, the impairment is, or will be, no longer of such severity as to prevent SGA.

DECISION AND ORDER

This Administrative Law Judge, based on the findings of fact and conclusions of law, decides that the claimant is not "disabled" for purposes of the MA.

Accordingly, department decision in this matter is AFFIRMED.

/s/ _____
Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 2, 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.

JWO

cc:

A large black rectangular redaction box covers the names and contact information of the recipients listed under the 'cc:' field.