

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.: 2009-19140
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
July 27, 2009
Wayne County DHS (82)

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 July 27, 2009. The claimant appeared and testified. The claimant was represented by [REDACTED] of [REDACTED].

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 November 18, 2008, an application was filed on claimant's behalf for MA-P benefits. The application did not request retroactive medical coverage.
- (2) On December 15, 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 5, 2009, a hearing request was filed to protest the department's determination.
- (4) Claimant, age 50, has a high school education.
- (5) Claimant has history of work as a child care provider, receptionist, and nurse's assistant.
- (6) Claimant was hospitalized [REDACTED] following complaints of two weeks of headaches and one day of emesis. A CT revealed a left frontal mass consistent with a meningioma. Claimant underwent a preoperative angiogram with embolization. She then underwent a left frontal craniotomy and removal of meningioma. A postoperative MRI revealed gross total resection of the lesion.
- (7) Claimant was off work from [REDACTED] through [REDACTED]. In [REDACTED], claimant began working 18 hours a week as a receptionist for [REDACTED]. She also began working 20 hours a week as a child care provider for her 16 month old grandchild.
- (8) At the time of the hearing, claimant was continuing to work as a child care provider.
- (9) 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 is 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, the 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, the record indicates that, at the time of the hearing, claimant was employed as a child care provider, caring for her 16 month old grandchild. Claimant testified that following her surgery in [REDACTED], she returned to work in [REDACTED] as a receptionist for [REDACTED]. She reported that she worked 18 hours a week at H & R Block. Claimant also began working as a child care provider in [REDACTED], working 20 hours a week caring for her young grandchild. The record supports a finding that claimant is currently engaged in substantial gainful activity. But, even if claimant is not working enough hours in order to be considered engaged in substantial gainful activity, it appears that claimant does not meet the durational requirement.

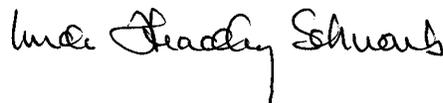
In the second step of the sequential evaluation process, the trier of fact must determine if claimant had a severe impairment which met the durational requirement. Unless an impairment is expected to result in death, it must have lasted or be expected to last for a continuous period of at least 12 months. 20 CFR 416.909. In this case, in late [REDACTED] or early [REDACTED], claimant developed a headache. Following one day of emesis, claimant was hospitalized on [REDACTED]. It was discovered that claimant had a left frontal meningioma. She underwent tumor embolization and resection of the left frontal tumor. She was discharged on [REDACTED]. Thereafter, claimant remained home to recover for a period of time. In [REDACTED], she began working at [REDACTED] as a receptionist for approximately 18 hours a week. Shortly thereafter, she also returned to work as a child care provider for her young grandchild. Claimant reported that she was working 20 hours a week as a child care provider

and 18 hours a week as a receptionist at [REDACTED]. Fortunately, it appears that claimant has had no negative after effects following her tumor resection. There is nothing in the hearing record to suggest that claimant has limitations which have resulted or are expected to result in the inability to do any substantial gainful activity for a continuous period of not less than 12 months. The hearing record fails to present the required medical data and evidence to support a finding that claimant has or had an impairment which prevented any substantial gainful activity for the 12 months durational requirement. 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.**



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

Date Signed: 10/28/09

Date Mailed: 10/28/09

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.

The Claimant may appeal the Decision and Order to the Circuit 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.

2009-19140/LSS

LSS/jlg

cc:

