

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.: 2009-23810

Issue No.: 2009

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

September 9, 2009

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 September 9, 2009. The claimant appeared and testified. Claimant was represented by [REDACTED]

[REDACTED].

ISSUE

Did the Department of Human Services (DHS or department) properly determine that claimant was 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 May 27, 2008, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to March of 2008.

- 2) On December 29, 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 23, 2009, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 53, has a high-school education and completed training as a journeyman carpenter.
- 5) Throughout the time period in question, claimant was a self-employed carpenter, "rehabing and remodeling" homes. Claimant worked full time as work was available.
- 6) Claimant had an interruption in his employment from [REDACTED] [REDACTED] as a result of a bout with pneumonia and the subsequent development of antibiotic-associated colitis.
- 7) Claimant stopped work in [REDACTED] as a result of a motor vehicle accident. Claimant is now involved in litigation over that accident.
- 8) Claimant fully recovered from his bout with pneumonia and colitis. There have been no reported residual problems or limitations.
- 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, do 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 twelve 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 he was or 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.

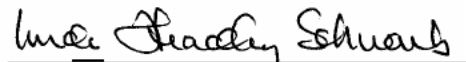
First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, at the time of the hearing, claimant was not working. Therefore, claimant may not be disqualified for MA at this step in the sequential evaluation process.

Secondly, the trier of fact must determine if claimant has a severe impairment which meets 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 twelve months. 20 CFR 416.909. In this case, claimant was hospitalized [REDACTED], as a result of one day's onset of chest pain. He was diagnosed with community acquired pneumonia and discharged on antibiotics on [REDACTED]. Subsequently, on [REDACTED], claimant was hospitalized for Clostridium (C.) difficile colitis. He was treated with a new type of antibiotic therapy and discharged with instructions to complete therapy with the new antibiotic. Claimant was re-hospitalized [REDACTED] when his symptoms of C. difficile colitis reoccurred due to non-compliance with prescribed medication. Claimant was treated with the correct dosage of antibiotic and discharged on [REDACTED]. Claimant has reported no residual problems or

limitations from his bout with pneumonia and/or colitis. Claimant testified that he returned to his employment as a self-employed carpenter within five to six months after he first became ill. There is nothing in the 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 twelve months. Claimant has failed to present the required medical data and evidence necessary to support a finding that he had or has an impairment which prevents any substantial gainful activity for the twelve-month durational requirement. Claimant was engaged in full-time employment, as the work was available, before and after his illness with pneumonia and colitis. Accordingly, the undersigned Administrative Law Judge 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 May 27, 2008, application for Medical Assistance. Accordingly, the department’s determination in this matter is hereby affirmed.


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

Date Signed: January 12, 2010

Date Mailed: January 14, 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:

