

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.: 2009-6784  
Issue No.: 2009, 4031  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
February 3, 2009  
Oakland CountyDHS (2)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a hearing was held in Madison Heights, Michigan on February 4, 2009. The Claimant appeared and testified. The Claimant was represented by [REDACTED]. [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA-P") and Retro MA-P benefit programs.

FINDINGS OF FACT

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

1. The Claimant submitted a public assistance application seeking MA-P and Retro MA-P and State Disability Assistance ("SDA") benefits on July 7, 2008.

2. On August 22, 2008, the Medical Review Team (“MRT”) found the Claimant not disabled finding the Claimant’s impairment(s) lacks duration of 12- months for MA-P and Retro MA-P purposes. (Exhibit 1, pp. 1, 2)

3. The Claimant was approved for SDA benefits but was subsequently found ineligible based on other criteria. (Exhibit 1, pp. 1, 2)

4. On September 2, 2008 the Department sent the Claimant an eligibility notice informing the Claimant that his MA-P benefits were denied. (Exhibit 2)

5. On October 30, 2008, the Department received the Claimant’s Hearing Request protesting the determination that he was not disabled.

6. On January 7, 2009, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 3, pp. 1, 2)

7. The Claimant’s alleged physical disabling impairments are due to multiple sclerosis, bilateral carpal tunnel syndrome, shoulder and hand pain.

8. The Claimant’s alleged mental disabling impairments are due to depression and anxiety.

9. At the time of hearing the Claimant was 49 years old with a [REDACTED] birth date; was 5’ 11” and weighed approximately 167 pounds.

10. The Claimant is a high school graduate with a history of unskilled laborer.

11. The Claimant’s previous employment includes owning a lawn care/snow removal business and phone soliciting for another business.

#### CONCLUSIONS OF LAW

The Medical Assistance (“MA”) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services (“DHS”), formally known as the Family Independence Agency, 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”).

Disability is defined as 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(a) The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual’s subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.929(a)

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant’s pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant’s pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant’s pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c) (2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b) (1)(iv)

In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) As outlined above, the first step looks at the individual's current work activity. An individual is not disabled regardless of the medical condition, age, education, and work experience, if the

individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c) (3) (5) (6)

In the record presented, the Claimant testified that he continues to work his business of lawn care and snow removal averaging 15 to 20 hours a week. As part of his job duties, the Claimant pushes a snow blower. The Claimant has owned his business since approximately [REDACTED]. In addition, the Claimant works Monday through Friday, from 5:00p.m. until 9:00p.m., to include some Saturdays, soliciting services of another business. The Claimant has worked this position for the last 6 or 7 years. Disability is defined as 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(a) An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a) (4) (i) Ultimately, based upon the Claimant's testimony that he continues to perform basic work activities on a full-time basis despite his limitations, the Claimant cannot be found disabled for MA-P purposes. Accordingly, the Department's determination is upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above finds of facts and conclusions of law, finds that the Department of Human Services properly determined the Claimant was not disabled for MA-P and Retro MA-P purposes.

Accordingly, it is ORDERED: The Department's determination is AFFIRMED.

/s/  
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Colleen M. Mamelka  
Administrative Law Judge  
For Ishmael Ahmed, Director  
Department of Human Services

Date Signed: March 5, 2009

Date Mailed: March 9, 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 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.

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