

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.: 2009-12874
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
April 23, 2009
Luce 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 April 23, 2009. The claimant appeared and testified.

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 September 8, 2008, claimant filed an application for MA-P benefits. Claimant requested MA-P retroactive to July 2008.
- (2) On October 28, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.

- (3) On January 9, 2009, a hearing request was filed to protest the department's determination.
- (4) Claimant, age 58, has a high school education.
- (5) Claimant last worked in 2001 as a [REDACTED] program instructor teaching basic living skills to mentally handicapped individuals. Claimant has had no other relevant work experience.
- (6) Claimant has a history of a "nervous condition" and stopped working in 2001 because of a "nervous breakdown." Claimant has not sought mental health treatment for her condition.
- (7) Claimant was hospitalized [REDACTED] through [REDACTED] following complaints of sudden onset of bilateral lower and upper extremity weakness and numbness which spread up to her neck. The symptoms lasted for over one hour. Claimant was initially hospitalized at the [REDACTED] and then transferred to [REDACTED] for further work up and management. Following very extensive testing, a myocardial infarction and cerebral vascular accident was ruled out. Claimant's discharge diagnosis was anxiety, neurosis, and stress.
- (8) On [REDACTED], claimant had a neurology outpatient visit. The neurology examination was completely normal.
- (9) On [REDACTED], claimant went to an emergency room with complaints of chest pain, weakness, and shortness of breath. Myocardial infarction and cerebral vascular accident were ruled out.
- (10) Claimant suffers from anxiety, gastroesophageal reflux disease which is controlled by diet and medication, and mild intermittent asthma.

- (11) In approximately September 2008, the Social Security Administration denied claimant's application for Social Security benefits based upon disability. Claimant did not appeal the Social Security Administration determination.
- (12) In considering claimant's September 8, 2008 application for MA-P, the department considered the same condition as considered by the Social Security Administration in its denial of benefits.
- (13) Claimant suffers from no significant physical or mental limitations with regard to her 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).

Relevant departmental policy in this matter is as follows:

MA DISABILITY/BLINDNESS

Final SSI Disability Determination

SSA's determination that disability or blindness does not exist for SSI is **final** for MA if:

- The determination was made after 1/1/90, and
- No further appeals may be made at SSA.... Or
- The client failed to file an appeal at any step within SSA's 60 day limit, and
- The client is not claiming:
 - A totally different disabling condition than the condition SSA based its determination on, or

- An additional impairment(s) or change or deterioration in his condition that SSA has not made a determination on.

Eligibility for MA based upon disability or blindness does not exist once SSA's determination is final. PEM item 206, pgs. 2 & 3.

In this case, claimant acknowledged at the hearing that, when evaluating claimant, the SSA and the department considered the same medical condition. Claimant acknowledged that she did not appeal the SSA denial of her application for benefits based upon disability. The SSA determination that disability does not exist is final. Eligibility for MA with the department based on disability does not exist once SSA's determination is final. As such, the department's determination in this matter must be UPHELD. Even if a final SSA determination had not been made, claimant would still not be found disabled for purposes of MA.

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, claimant is not 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 mean 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 anxiety, gastroesophageal reflux disease, and mild intermittent asthma. Claimant has established that she has an impairment. But, claimant has not met her burden of proof that she has an impairment that is severe or significantly limits her physical or mental ability to perform basic work activities necessary for most jobs. The hearing record fails to support claimant's position that she is incapable of basic work activities. See 20 CFR 416.927. Claimant has undergone intensive medical testing. During her initial hospitalization at [REDACTED] in July 2008, claimant underwent multiple studies including cardiac enzymes which were negative. CT scan of the chest showed normal sinus rhythm. Claimant was transferred to [REDACTED] for further of the management. Her neurological examination was essentially normal. The remainder of her examination was normal as well with no heart murmur on cardiac examination and no wheezes on chest examination. Claimant underwent serial cardiac enzymes which were negative. Claimant underwent an MRI of the head plus MRA which was negative. She underwent CT scan of the chest which did not show any aortic dissection or evidence of pulmonary embolism. During hospitalization, claimant also underwent 2-D M-mode echocardiogram as well as transesophageal echocardiogram which did not show any clots. There were no significant valvular abnormalities, no intracardiac shunt, and no patent foramen ovale. Given her history of

having had a stress test with subsequent normal cardiac catheterization 2 years prior, claimant underwent a cardiac CT which did not show any significant stenosis and no evidence of coronary atherosclerosis. An EEG was done which was negative for any epileptiform activity. Claimant's discharge diagnosis was anxiety, neurosis, and stress. Claimant saw a neurologist during an outpatient visit on [REDACTED]. The neurologist [REDACTED] wling indicated that claimant's diagnosis upon discharge from hospitalization in July 2008 was anxiety and depression. At the outpatient visit of [REDACTED], [REDACTED] found claimant's neurological examination to be "absolutely normal." [REDACTED] commented "I have to wonder if this is either organic at all or not..." The next day, claimant visited an emergency room on [REDACTED] with complaints of chest pain, weakness, and shortness of breath. Claimant acknowledged that a myocardial infarction and cerebral vascular accident were ruled out. The hearing record fails to document a severe impairment. Claimant suffers from anxiety, gastroesophageal reflux disease which is controlled by diet and medication, and mild intermittent asthma. The record does not support a finding that claimant has a severe impairment. Accordingly, the undersigned must find that the department properly determined that claimant is not entitled to MA based upon disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly determined that claimant is not "disabled" for purposes of the Medical Assistance program.

Accordingly, the department determination in this matter is **HEREBY AFFIRMED**.

/s/
Linda Steadley Schwarb
Administrative Law Judge

for Ismael Ahmed, Director
Department of Human Services

Date Signed: 07/20/09

Date Mailed: 07/21/09

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.

LSS/jlg

cc:

