

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████

Claimant

Reg. No.: 2009-13082

Issue No.: 2009

Case No.: ██████████

Load No.: ██████████

Hearing Date:

May 27, 2009

Oakland County DHS (4)

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 May 27, 2009. The claimant participated via telephone conference call from the Mound Round Correctional Facility, Department of Corrections. The claimant was represented by ██████████ ██████████ of ██████████.

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 August 13, 2008, an application was filed on claimant's behalf for MA-P benefits.

The application requested MA-P retroactive to May 2008.

- (2) On October 13, 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 8, 2009, a hearing request was filed to protest the department's determination.
- (4) Claimant, age 32, has a 7th grade education. Claimant reports receiving special education programming from grades 3 through 7.
- (5) Claimant reports no relevant work history.
- (6) Claimant has a remote history of a gun shot wound to the right thigh.
- (7) In January or February 2008, claimant suffered a fracture of the proximal shaft of the left fourth metacarpal (non dominant hand.)
- (8) On [REDACTED], claimant suffered a gun shot wound to the left upper back. Claimant was hospitalized from [REDACTED] through [REDACTED]. His discharged diagnosis was gun shot wound to the left upper back; left posterior rib fractures, 1 – 3; left pulmonary contusion; and left hemothorax. Claimant underwent a thoracotomy with evacuation of hematoma on [REDACTED]; an ultrasound guided thoracentesis on [REDACTED]; and a chemical pleurodesis with Vibramycin on [REDACTED]. Claimant was discharged with a limitation of no lifting greater than 20 lbs for the next two weeks. (Exhibit #1, page 14.)
- (9) At the hearing, claimant reported low back pain as a result of muscle cramps as well as left hand weakness.
- (10) Since May 2008 to date, claimant has not had a continuous period of 12 months or more in which he was restricted to less than sedentary 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).

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 he 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. At the time of the hearing, he was incarcerated. The record not support a finding that claimant is disqualified for MA at this step in the sequential evaluation process.

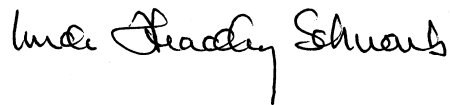
Secondly, the trier of fact must determine if claimant has a severe impairment which meets the durational requirement. Unless an impairment is expected to result in death, it must have lasted or be expected to last for a continuous period of at least 12 months. 20 CFR 416.909. In this case, in January or February 2008, claimant suffered a fracture to the proximal shaft of the left fourth metacarpal (non dominant hand.) The record suggests that claimant's injury resolved without significant complications. (See Claimant exhibit A, page 7.) On [REDACTED], claimant suffered a gun shot wound to the left upper back. Claimant was hospitalized until [REDACTED]. His discharged diagnosis was gun shot wound to the left upper back; left posterior rib fractures, 1 – 3; left pulmonary contusion; and left hemothorax. During hospitalization, claimant underwent a thoracotomy with evacuation of hematoma on [REDACTED]; an ultrasound guided

thoracentesis on [REDACTED]; and a chemical pleurodesis with Vibramycin on [REDACTED]. Upon discharge, claimant was given a limitation of no lifting greater than 20 lbs for the next two weeks. On [REDACTED], claimant's treating surgeon opined that claimant was limited occasionally up to 10 lbs and standing and walking less than 2 hours in an 8 hour work day. The surgeon indicated that claimant's limitations were not expected to last more than 90 days. The surgeon indicated that claimant was capable of simple grasping and reaching with the bilateral upper extremities and capable of pushing/pulling and fine manipulation with the left upper extremity. The surgeon indicated that claimant had no mental limitations. On [REDACTED], claimant's treating physician [REDACTED] indicated that claimant was capable of frequently lifting up to 10 lbs and occasionally lifting up to 25 lbs. The physician indicated that claimant had no limitations with regard to repetitive activities of the upper and lower extremities. The physician did limit claimant to standing or walking less than 2 hours in an 8 hour work day. On [REDACTED], the treating physician diagnosed claimant with left hand fourth metacarpal fracture, bullet fragments, and old rib fractures. The physician indicated that claimant was capable of occasionally lifting up to 25 lbs and indicated that claimant had no limitations with regard to repetitive activities with the upper or lower extremities. The physician again limited claimant to standing and walking less than 2 hours in an 8 hour work day. The treating physician's opinion with regard to claimant's limitations as to standing and walking is not supported by acceptable medical evidence consisting of clinical signs, symptoms, laboratory or test findings, or other evaluative techniques and is not consistent with other substantial evidence in the record. Claimant's treating plastic surgeon had indicated on [REDACTED], that he did not expect claimant's limitations to last more than 90 days. [REDACTED] did not present sufficient medical evidence to support his opinion as to limitations upon claimant's ability to walk or stand.

The evidence presented fails to support the physician that claimant has a severe limitation. See 20 CFR 416.927c (2) & .927d (3) & (4). There is nothing in the record that to suggest that claimant's limitations have resulted in the inability to do any substantial gainful activity for a continuous of not less than 12 months. Claimant has failed to present the required medical data and evidence necessary to support a finding that he has an impairment which prevents any substantial gainful activity for the 12 month durational requirement. Accordingly, the undersigned finds that the department has properly determined that claimant is not eligible for MA based on disability. Even if claimant did have a severe limitation which met the required duration, the record clearly supports a finding that claimant is capable of sedentary to light activities. See Med Voc Rules 201.24 & 202.17. 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 decision in this matter is HEREBY, AFFIRMED.



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

Date Signed: 10/21/09

Date Mailed: 10/21/09

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

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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:

