

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.: 2009-20472
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
July 22, 2009
Wayne County DHS (57)

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 22, 2009. Claimant appeared and testified. Claimant was represented by [REDACTED] of [REDACTED]. Following the hearing, the record was kept open for the receipt of additional medical evidence. Additional documents were received and reviewed.

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 July 7, 2008, an application was made on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to June of 2008.

- 2) On December 3, 2008, the department denied claimant's application for benefits based upon a belief that claimant did not meet the requisite disability criteria.
- 3) On February 27, 2009, a hearing request was filed on claimant's behalf to protest the department's determination.
- 4) Claimant, age 29, has a tenth-grade education and a GED earned in prison.
- 5) Claimant last worked in 2007 as a bus boy. Claimant has also performed relevant work as a home improvement and construction laborer as well as changing tires and stocking shelves at a [REDACTED] Gas Stations. Claimant's relevant work history consists exclusively of unskilled work activities.
- 6) Claimant has a history of alcohol and marijuana abuse.
- 7) Claimant was hospitalized [REDACTED] following a motor vehicle accident in which claimant was an unrestrained occupant with obvious signs of intoxication. Claimant was treated for a closed head injury requiring a tracheotomy and ventilatory assistance. Claimant left the hospital on [REDACTED] [REDACTED], against medical advice. He returned later for trach and PEG tube removal. Claimant has had no further in-patient hospitalizations.
- 8) At the time of the hearing, claimant was a recipient of the Adult Medical Program, receiving regular medical care. No prescriptions were prescribed for claimant at the time of the hearing.
- 9) Claimant complained of knee pain and headaches approximately twice a week.
- 10) At the time of the hearing, claimant testified that he was currently enrolled in a heating and air conditioning training program, attending school four hours a day, four days a week. The training program was said to last for ten months.

- 11) At the hearing, claimant reported that he continues to smoke marijuana most days of the week but planned to stop because of his school enrollment.
- 12) An x-ray of claimant's left knee performed on [REDACTED] was completely normal.
- 13) Claimant has suffered from no significant physical or mental limitation with respect to his ability to perform basic work activities which lasted in excess of 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 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 reported that he was not currently working. Accordingly, claimant may not be eliminated from 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 means 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).

In this case, claimant was involved in a motor vehicle accident on [REDACTED], in which he was the unrestrained occupant. He suffered a closed head injury and required a tracheotomy with ventilory assistance. Claimant left the hospital against medical advice on [REDACTED]. He later returned for trach and PEG tube removal. At the hearing on [REDACTED], claimant complained of knee pain and headaches approximately twice a week. He reported that he was enrolled in a heating and air conditioning training program that met four hours a day, four days a week. Claimant expressed confidence that he would be able to complete the training program. He reported that he was still smoking marijuana most days a week but did plan to stop because of his school program. Claimant denied having significant problems with short-term memory or concentration and testified that he was able to maintain activities and keep himself focused. He reported that he did not believe he would have any problems with memory or concentration that would interfere with his schooling. Claimant also testified that he believed he was capable of performing a sit-down job. Claimant testified that he was seeing a physician

through the Adult Medical Program and that the physician had not prescribed any medication for claimant. Claimant certainly did sustain an injury in his motor vehicle accident in [REDACTED]. But claimant has not met his burden of proof that he has or had an impairment that was severe or that significantly limited his physical or mental ability to perform basic work activities necessary for most jobs that lasted in excess of one year. The hearing record fails to support the position that claimant is incapable of basic work activities. See 20 CFR 416.927. Accordingly, the undersigned must conclude that the department properly determined that claimant is not entitled to MA based upon disability. Even if claimant did have a severe impairment which met the required duration, the record clearly supports the finding that claimant is capable of substantial gainful activity on a regular and continuing basis.

Claimant was evaluated by a consulting internist for the [REDACTED] on [REDACTED]. The consultant made the following findings:

MUSCULOSKELETAL: Range of motion of the C-spine is full. Range of motion of the thoracolumbar spine is full. There is no mid line spine tenderness. Bilateral knees, hips, and ankles have full range of motion. There is mild crepitus noted in both knees with passive range of motion. No major effusion or redness is noted. No tenderness noted on palpitation of the knees. Bilateral shoulders, elbows, and wrists have full range of motion. The dorsalil pedis is bilaterally 2+. No pedal edema. No clubbing or cyanosis. Capillary refill is intact and normal. Gait is normal. No cane is used by the patient. No limp noted.

NEUROLOGICAL: Alert and oriented to time, person and place. Speech is normal. Cranial nerves II through XII are intact. Memory: able to tell birth date and current president's name. Babinski is negative. Romberg test is negative. Finger to nose test is normal. DTR's are bilaterally symmetrical and 2+. The muscle power is 5/5 in all extremities. Pain and touch are intact bilaterally symmetrical and equal. The patient can get on and off the table and chair without any assistance.

IMPRESSION:

1. History of car accident with closed head injury requiring tracheostomy and ventilary assistance. The patient currently complains of bilateral knee pain; rule out any traumatic arthritis.

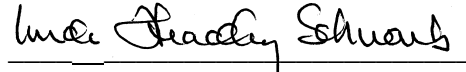
It is noted that claimant had an x-ray of the left knee on [REDACTED], which was completely normal (Claimant Exhibit A).

At the hearing, claimant testified that he is capable of standing for thirty minutes and walking for one mile. Claimant testified that he is able to sit one to two hours and lift fifty pounds. Claimant reported that he feels pain in his knees when he bends and stoops. Claimant testified that he is capable of gripping and grasping with the bilateral hands. Claimant testified that he experiences headaches, approximately twice a week. He indicated that he does take any medication or over-the-counter remedies for his headaches. A careful consideration of the entire hearing record by the undersigned Administrative Law Judge supports a finding that claimant is capable of medium work activities on a regular and continuing basis. See 20 CFR 416.967(c). Accordingly, it must be found that claimant is not “disabled” for purposes of the MA program. See Med Voc Rule 203.25. As such, the department’s determination in this matter must be affirmed.

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: February 9, 2010

Date Mailed: February 12, 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:

