

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.: 2009-22979
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
July 16, 2009
Macomb County DHS (20)

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 16, 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) and State Disability Assistance (SDA) programs?

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 9, 2008, an application was filed on claimant's behalf for MA-P and SDA benefits. The application requested MA-P retroactive to August of 2008.
- 2) On November 20, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On February 17, 2009, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 36, has a high-school education.
- 5) Claimant last worked in August of 2008 as a cocktail waitress. Claimant has also performed relevant work as the manager of [REDACTED], a telemarketer, a dental assistant, and a waitress. Claimant's skills as a manager and dental assistant are transferable.
- 6) On [REDACTED], claimant sought emergency room treatment for swelling of the lower extremities.
- 7) Claimant was hospitalized [REDACTED] following a motor vehicle accident secondary to a seizure.
- 8) Claimant sought emergency room treatment on [REDACTED] for a seizure. The seizure was thought to be secondary to subtherapeutic Dilantin level due to the fact that claimant ran out of medication the previous day.
- 9) Claimant sought emergency room treatment on [REDACTED], for a seizure.
- 10) Claimant sought emergency room treatment on [REDACTED] for a seizure.
- 11) Claimant has had no further emergency room or hospital admissions.

- 12) Claimant currently suffers from a seizure disorder, migraine headaches, and cervical disc disease.
- 13) Claimant's only ongoing restrictions or limitations with regard to work activities are the standard seizure precautions of no working around moving parts, working at heights, and the like. Claimant suffers from no additional significant restrictions or physical 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).

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 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 currently 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 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).

Claimant has been diagnosed with a seizure disorder. 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. See Social Security Ruling 85-15, which provides that a person with a seizure disorder who is restricted only from working around heights and near dangerous machinery does not have a non-exertional impairment which would significantly affect her ability to work. The evidence has failed to support the position that claimant is incapable of basic work activities. See 20 CFR 416.927. Accordingly, this Administrative Law Judge concludes that the department properly determined that claimant is not entitled to MA based upon disability.

Even if claimant did establish that she had a severe impairment, she would still be found capable of other work. Clearly, claimant does not need a listing based upon her seizure disorder. The only documented seizures occurred on [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. No other seizures are documented. Clearly claimant does not need a listing. See Listings 11.02 and 11.03.

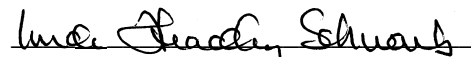
A medical examination report completed on [REDACTED], indicates that claimant is capable of occasionally lifting up to twenty pounds and has no limitations upon her ability to walk, stand, sit, or engage in repetitive activities with the upper or lower extremities. The document also indicates that claimant has no mental limitations. It would appear that claimant is capable of her past work as a telemarketer. Certainly, subject to the standard seizure precautions, claimant must be found capable of sedentary work. The hearing record simply fails to support the proposition that claimant is incapable of sedentary work activities, subject to the standard seizure precautions. Accordingly, the department's determination in this matter must be affirmed.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM Item 261. In this case, there is insufficient medical evidence to support a finding that claimant is incapacitated or unable to work under SSI disability standards for at least 90 days. Therefore, the undersigned finds that claimant is not disabled for purposes of the SDA program.

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 and State Disability Assistance programs. Accordingly, the department’s determination in this matter is hereby affirmed.


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

Date Signed: February 19, 2010

Date Mailed: February 22, 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:

