

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.: 2009-28000  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
November 16, 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 November 16, 2009. Claimant appeared and testified. Claimant was represented by [REDACTED]. Following the hearing, the record was kept open for the receipt of additional medical evidence. No new documentation was submitted.

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 December 16, 2008, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to September of 2008.

- 2) On March 4, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On June 1, 2009, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 48, has a tenth-grade education.
- 5) Claimant last worked in 2006 as a cook. Claimant has also performed relevant work as a customer services representative at a laundromat, a hotel housekeeper, a residential housekeeper, and as a machine operator. Claimant's relevant work history consists exclusively of unskilled work activities.
- 6) Claimant has a history of crack cocaine and alcohol abuse as well as peptic ulcer disease.
- 7) Claimant was hospitalized [REDACTED] as a result of a bleeding duodenal ulcer. Claimant underwent surgery for a vagotomy and antrectomy with a retrocolic braun enterostomy.
- 8) Claimant has had no further hospitalizations or medical treatment.
- 9) Following the hearing, the record was kept open so as to allow the claimant's authorized representative to submit additional medical evidence and, per Order of the undersigned Administrative Law Judge, for the department to set up and pay for a consulting exam. Claimant did not appear for her scheduled medical exam and no additional medical evidence was submitted.
- 10) Claimant's complaints and allegations concerning her impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, do not reflect an individual who is so impaired as to be

incapable of engaging in any substantial gainful activity for a continuous period of not less than 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 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.

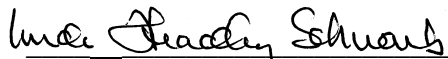
First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, at the time of the hearing, claimant reported that she was not employed. Accordingly, claimant may not be eliminated from eligibility for MA at this step 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 least twelve months. 20 CFR 416.909. In this case, claimant had a history of crack cocaine and alcohol abuse as well as peptic ulcer disease. She was hospitalized in [REDACTED] and underwent her first and only surgery for ulcers. Following the hearing, claimant reportedly did not attend a scheduled consulting examination. Claimant's authorized representative did not submit additional medical documentation. Literally, the only medical evidence contained in the hearing record was documentation from claimant's [REDACTED] hospitalization. The medical record indicates that claimant had a four-day history of hematemesis, burning, and abdominal pain before

admission. At the hearing, claimant testified that claimant's first and only surgery for ulcers occurred in [REDACTED]. A careful review of the entire record indicates that there is no support for a finding that claimant has experienced limitations which resulted in the inability to perform any substantial gainful activity for a continuous period of not less than twelve months. The record fails to provide the required medical data and evidence to support a finding that claimant has or had an impairment which has or will prevent performance of substantial gainful activity for the twelve-month durational requirement. Accordingly, the undersigned finds that the department has 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 determination in this matter is hereby affirmed.

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

Date Signed: May 12, 2010

Date Mailed: May 17, 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.

2009-28000/LSS

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:

