

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: 2009-28398

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

September 24, 2009

Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 September 24, 2009. The Claimant appeared and testified.

ISSUE

Whether the department properly determined the claimant is not "disabled" for purposes of the Medical Assistance (MA) program?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as a material fact:

1. On October 20, 2008, the Claimant applied for MA-P and retro MA.
2. On February 12, 2009, MRT denied the Claimant's request.
3. On May 14, 2009, the Claimant submitted, to the Department, a request for hearing.

4. The Claimant is 46 years old.
5. The Claimant completed a high school education.
6. The Claimant has employment experience as a real estate agent and broker.
7. The Claimant testified to the following complaints: Tired easily, fatigue, can walk 4-6 blocks as of December 2008, no issue with standing, no problem sitting, no problems bending over, no problems with grip and grasp, chest pain on any exertion, shortness of breath on exertion, can lift less than 10lbs, takes care of his own household chores, sleep 4 hours at a time, spends most of the day in bed, stays in home all the time and experiences ongoing crying spells.
8. At the hearing, the Administrative Law Judge ordered the department to schedule a psychiatric examination and internist evaluation for the Claimant. The Claimant failed to report to the office for the examination.
9. Upon Claimant's request for hearing, medical evidence was submitted to the State Hearing Review Team (SHRT). The SHRT team determined the Claimant was not disabled based upon insufficient medical evidence.

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 400.1 *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).

Pursuant to Federal Rule 42 CFR 435.540, the Family Independence Agency uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...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.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If the impairment or combination of impairments does not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3)

the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

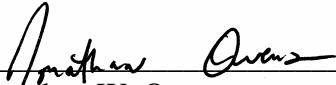
The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

In the present case, the Claimant alleged mental and physical disabilities during the hearing. Additional evidence was needed to determine the extent and severity of Claimant's alleged conditions. This Administrative Law Judge ordered the Department to schedule an appointment for a psychiatric and internist evaluation of the Claimant. It was impressed upon the Claimant the necessity of him attending such an evaluation. The Claimant failed to attend the evaluation. Pursuant to the aforementioned manual item, this Administrative Law Judge cannot make a finding that the Claimant is disabled since the Claimant failed to report for the scheduled evaluation. It should be further noted that the Claimant failed to contact Administrative Hearings or the Department with a good cause reason for failing to report for the evaluation as ordered. Therefore the Claimant cannot be found disabled pursuant to 20 CFR 918(a).

DECISION AND ORDER

This Administrative Law Judge, based on the findings of fact and conclusions of law, decides that the claimant is not “disabled”.

Accordingly, department decision in this matter is AFFIRMED.



Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 12/16/09

Date Mailed: 12/16/09

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 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.

JWO/dj

cc:

