

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: 2009-9619
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 2, 2009
Wayne County DHS (19)

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 April 2, 2009. Claimant appeared and testified.

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, claimant filed an application for MA-P and SDA benefits.

Claimant did not request retroactive MA-P.

- (2) On October 29, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- (3) On November 17, 2008, claimant filed a hearing request to protest the department's determination.
- (4) Claimant, age 47, has a high school education with some college education. In the past, Claimant was a licensed realtor.
- (5) Claimant last worked in September of 2007 as a travel agent. Claimant has had no other relevant work experience.
- (6) Claimant has a history of a knee injury sustained in 2003.
- (7) Claimant complains of an ongoing right knee pain.
- (8) All diagnosis testing on claimant's right knee, including the most recent MRI of [REDACTED], [REDACTED] and x-ray of [REDACTED], have been essentially normal.
- (9) Claimant suffers from no medically determinable significant physical or mental limitations with respect 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, the 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 mean 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 maintains that she suffered a knee injury in [REDACTED]. The record indicates that all evaluation of the right knee has been essentially normal. The most recent MRI of claimant's right knee was performed on [REDACTED]. (See Department Exhibit 1, pg. 21). Her MRI was interpreted as a "normal MRI of the right". The most recent x-ray of claimant's right knee was

taken on [REDACTED]. The x-ray was completely normal. (See Department Exhibit 2) No medically determinable impairment has been established. All MRI, x-ray, and laboratory work has been within normal limits. On [REDACTED], Claimant treating orthopedic surgeon [REDACTED] examined claimant's right knee. The physician found that claimant's range of motion was full; there was no instability; her muscle strength was 5/5 throughout; there was normal tone; and no atrophy was observed. The physician noted that x-rays revealed well maintained joint spaces with no osseous abnormalities. He noted that the MRI of the right knee performed on [REDACTED] was normal. On [REDACTED], Claimant was seen by [REDACTED] for another opinion. The physician noted that an MRI at the time of the injury in [REDACTED] was negative. He noted that a repeat MRI in [REDACTED] was also negative. Upon examination, [REDACTED] found no obvious deformity or swelling of right versus left. He noted that the range of motion was full and that there was no instability. Claimants muscle strength was found to be 5/5 throughout with normal tone and no atrophy. X-rays demonstrated no abnormality and the MRI "shows it is a normal MRI." On [REDACTED], claimants treating family physician [REDACTED] diagnosed claimant with severe right knee osteoarthritis and pain. The physician opined that claimant was limited to occasionally lifting less than 10 lbs and limited to standing and walking less than 2 hours in an 8 hour work day and sitting less than 6 hours in an 8 hour work day. Unfortunately, the physician's opinion has no support by any medical evidence. [REDACTED] opinion is not supported by acceptable medical evidence consisting of clinical signs, symptoms, laboratory or testing findings, or other evaluative techniques and is not consistence with other substantial evidence in the record. [REDACTED] did not present sufficient medical evidence to support his opinion. See 20 CFR 416.927c(2); 20 CFR 416.927 d (3) and (4). The evidence presented fails to support the position that claimant has a medically determinable impairment. Claimant was

seen by a consulting internist for the [REDACTED] on [REDACTED].

An x-ray of the right knee taken at that time was essentially normal. Claimant also underwent a

consulting psychiatric evaluation for the [REDACTED] on [REDACTED]

[REDACTED]. The consultant found that the claimant had the Dysthymic disorder with a GAF score of

60. The hearing record fails to support the position that claimant has a medically determinable

impairment. Claimant has not met her burden of proof that she has an impairment which is

severe or significantly limits her physical or mental ability to perform basic work activities

necessary for most jobs. The evidence fails to support claimant's position that she is incapable

of basic work activities. See 20 CFR 416.927. Claimant may not make a showing of a

medically determinable impairment based solely on her testimony. 20 CFR 416.908.

Accordingly, the undersigned must find that the department properly determined that claimant is

not entitled to MA based upon disability.

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 standard for at least 90 days. According with, 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 Medical Assistance and State Disability Assistance programs.

Accordingly, the department’s determination in the matter is hereby AFFIRMED.

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

Date Signed: 04/23/09

Date Mailed: 04/24/09

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 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:

