

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.: 2010-23456
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
April 7, 2010
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 April 7, 2010. Claimant did not appear for the hearing. Claimant was represented by [REDACTED].

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 October 5, 2009, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to September of 2009.

- 2) On November 20, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On February 16, 2010, a hearing request was filed to protest the department's determination.
- 4) At the hearing, claimant's authorized representative reported that claimant had failed to respond to the authorized representative and that no additional medical records were available. The authorized representative requested that the hearing be conducted without claimant and that the Administrative Law Judge make a decision based upon the available medical record.
- 5) Claimant was hospitalized in [REDACTED] as a result of complaints of abdominal pain and swelling. On [REDACTED], claimant underwent a total abdominal hysterectomy with bilateral salpingo-oophorectomy following evaluation by pathology. Claimant was noted to have stage IA malignant Brenner tumor.
- 6) Claimant was seen by her gynecologic oncologist on [REDACTED]. Her incision was said to be healing well and she was directed to return in six months for routine follow-up.
- 7) Claimant's authorized representative has been unable to obtain claimant's cooperation in obtaining additional and/or updated medical evidence as well as information as to claimant's work status.
- 8) The allegations concerning claimant's impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, does not reflect an individual who is or was 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

Federal regulations at 20 CFR 416.913(e) state as follows:

COMPLETENESS

The evidence in your medical record, includes the medical evidence from acceptable medical sources (containing the clinical and laboratory findings) and other medical sources not listed in (a) of this section, information you gave us about your medical condition(s) and how it affects you, and other evidence from other sources, must be complete and detailed enough to allow us to make a determination or decision about whether you are disabled or blind. It must allow us to determine –

1. The nature and severity of your impairment(s) for any period in question;
2. Whether the duration requirement described in section 416.909 is met; and
3. Your residual functional capacity to do work-related physical and mental activities ...

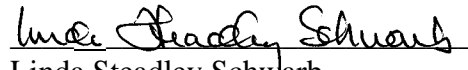
In general, claimant has the responsibility to prove that she is disabled. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be 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 this case, there is insufficient medical evidence regarding claimant's medical condition. Claimant's hospital records from her admission in [REDACTED] as well as a brief note from the gynecologic oncologist on [REDACTED], are the only medical evidence contained in the hearing record. Claimant's authorized representative has not been able to locate claimant or, alternatively, claimant has failed to respond to the authorized representative's attempts at contact. Thus, claimant's cooperation cannot be secured to assist in obtaining additional, updated medical evidence. Further, there is no information as to claimant's work history or current work status. The undersigned Administrative Law Judge is unable to use the sequential evaluation process to assess claimant's eligibility for program benefits. See 20 CFR

416.920. There is simply insufficient information necessary to assess claimant's eligibility. Thus, the record does not support a finding that claimant had or has a disabling condition(s) which prevented all substantial gainful activity for the required one year duration. Accordingly, the department's denial of claimant's application must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services properly denied claimant's application for Medical Assistance based upon disability. 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: April 13, 2010

Date Mailed: April 14, 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.

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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:

