

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.: 2010-28314
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
April 26, 2010
Wayne County DHS (82)

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 26, 2010. Claimant appeared and testified. Claimant was represented by [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) 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 January 27, 2010, an application was filed on claimant's behalf for MA-P benefits. The application did not request retroactive medical coverage.

- 2) On February 9, 2010, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On March 22, 2010, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 53, has a high-school education.
- 5) At the time of the hearing, claimant was employed forty hours per week as a child care provider for her grandchildren aged 6, 5, and 1-year-old twins. Claimant reports having been so employed for the previous six years. Claimant earned in excess of \$1,000 per month during the months of December of 2009, January of 2010, February of 2010, and March of 2010.
- 6) Claimant has also performed relevant past work as a "change operator" at a casino and as a cafeteria worker. Claimant's relevant work history consists exclusively of unskilled work activities.
- 7) At the time of the hearing, claimant had no medical insurance. Claimant was terminated from the Adult Medical program because of her income.
- 8) Claimant was hospitalized [REDACTED]. She was diagnosed with shortness of breath due to asthma exacerbation, likely due to stress and cold air exposure; hypertension; and depression.
- 9) Claimant currently suffers from hypertension; asthma/chronic obstructive pulmonary disease (pulmonary function test on [REDACTED], revealed mild obstructive process); major depressive disorder, recurrent, severe without psychotic features; and osteoarthritis (x-ray of the left ankle on [REDACTED], revealed mild degenerative changes).

- 10) Claimant is currently engaged in substantial gainful activity.

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.

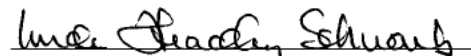
In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are 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 claimant is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, claimant is currently involved in substantial gainful activity. Claimant testified that she works forty hours per week as a child day care provider for her four grandchildren aged 6, 5, and 1-year-old twins. Claimant reported that she has been so employed for the last six years. She acknowledged that she earns \$400 to \$500 every two weeks. Departmental records reveal that claimant earned in excess of \$1,000 per month as a child day care provider during the most recent months of December of 2009, January of 2010, February of 2010, and March of 2010. Claimant's average gross monthly income is in excess of \$1,000 per month. See 20 CFR 416.974. Accordingly, the department must be upheld in its finding that claimant is not "disabled" for purposes of the MA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant does not meet the definition of medically disabled under 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: June 22, 2010

Date Mailed: June 24, 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:

