

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2010-44519  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date: September 2, 2010  
DHS County: Wayne (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 September 2, 2010. Claimant appeared and testified. 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 May 5, 2010, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to February of 2010.
2. On May 22, 2010, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
3. On July 21, 2010, a hearing request was filed to protest the department's determination.
4. Claimant, age 51, has tenth-grade education.
5. Claimant's last relevant work was performed in approximately 2000 as a truck driver. At the hearing, claimant testified that he currently performs odd jobs, such

as cutting grass, scrap metal, and collecting bottles in order to earn money for beer. Claimant's relevant work history consists exclusively of unskilled work activities.

6. Claimant has a history of hypertension and diabetes.
7. Claimant sought emergency room treatment on [REDACTED], as a result of a burn on the back of his right leg received on a hot wood stove. Claimant was diagnosed and treated for acute cellulitis of the right leg. Claimant was treated and released.
8. Claimant was hospitalized [REDACTED] as a result of right foot cellulitis secondary to bacterial invasion after rupture of a blister. Claimant developed osteomyelitis and underwent a partial first metatarsal amputation.
9. Claimant has had no further hospitalizations.
10. Claimant currently suffers from hypertension, diabetes, and complaints of frequent headaches.
11. Claimant has recovered from the partial right toe amputation and currently suffers from no significant physical or mental limitations with respect to his 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 (BAM), the Program Eligibility Manual (BEM) 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 he 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 engaged in substantial gainful activity. He testified at the hearing that he presently engages in odd jobs, such as cutting the grass, scrap metal, and collecting bottles to earn money for beer. These odd job activities apparently do not rise to the level of substantial gainful activity. 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 means 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

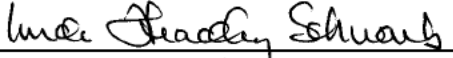
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

In the second step of the sequential evaluation, 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 at least twelve months. 20 CFR 416.909. In this case, claimant had emergency room treatment on [REDACTED], as a result of cellulitis which developed from a burn on the back of his right leg. Claimant was treated and released. Claimant was re-hospitalized [REDACTED] as a result of right foot cellulitis secondary to bacterial invasion from rupture of a blister. Claimant developed osteomellitus and underwent a partial first metatarsal amputation on [REDACTED]. Claimant has had no further hospitalizations. The record does not suggest that claimant suffers from any residual functional limitation as a result of the amputation. Claimant's treating physician opined on [REDACTED], that claimant suffers from essential hypertension, diabetes mellitus, and headaches. The physician opined that claimant had no physical or mental limitations. At the hearing, in addition to his testimony about his odd jobs, claimant testified that he performs housework, does the laundry, drives, grocery shops, and does the food preparation. When asked if there was anything that he could not do or needed help with, claimant responded "no." There is nothing in the record to suggest that claimant's limitations have or will result in the inability to do any substantial gainful activity for a continuous period of not less than twelve months. Claimant has suffered the partial amputation of his right big toe. It might be argued, as a result, claimant has an impairment. Nonetheless, the record does not support a finding that claimant has an impairment which is severe or significantly limits his physical or mental ability to perform basic work activities necessary for most jobs. In view of the opinion of claimant's own treating physician, the record fails to support the position that claimant is incapable of basic work activities. See 20 CFR 416.927. Accordingly, the undersigned concludes that the department properly determined that claimant is not entitled to MA based upon disability.

**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 determined 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: September 8, 2010

Date Mailed: September 10, 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

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