

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.: 2010-5688
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
February 22, 2010
Oakland County DHS (02)

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 February 22, 2010. Claimant participated in the hearing via telephone conference call from Florida. 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) 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 March 27, 2009, an application was filed on claimant's behalf for MA-P and SDA benefits. The application requested MA-P retroactive to February of 2009.

- 2) On June 8, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On September 3, 2009, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 37, is a high-school graduate with some college.
- 5) At the time of the hearing, claimant was and had been employed as a waitress since January of 2010. Claimant reportedly worked as a waitress throughout the month of March of 2009 and from October through December of 2009. During all of the above periods, claimant worked 25 to 30 hours per week.
- 6) Claimant has a history of alcohol and tobacco abuse as well as anxiety and depression.
- 7) Claimant was hospitalized [REDACTED] as a result of mental status changes and ETOH withdrawal symptoms. Her discharge diagnosis was ethyl alcohol abuse and withdrawal; normocytic normochromic anemia, stable at the time of discharge; electrolyte abnormalities, corrected at the time of discharge; and mental status changes, resolved.
- 8) Following discharge from the hospital, claimant entered placement on [REDACTED] [REDACTED], into a transitional housing program for recovering addicts and alcoholics in Florida. The program has a "zero tolerance" policy which includes mandatory drug and alcohol testing.
- 9) Reportedly, claimant has been sober since February of 2009.
- 10) Claimant currently suffers from no 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, 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, at the time of the hearing, claimant reported that she was and had been employed as a waitress since January of 2010. The record does not reflect claimant's earning level. Accordingly, claimant will not be disqualified for MA at this step in the sequential evaluation process. See 20 CFR 416.974.

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 this matter, claimant has had a history of alcohol and tobacco abuse as well as anxiety and depression. She was hospitalized for five days in [REDACTED] as a result of alcohol abuse and withdrawal. Shortly after discharge, she entered a residential transitional housing program for recovering addicts and alcoholics. The program has a “zero tolerance” policy that includes mandatory drug and alcohol testing. On [REDACTED], the president of the program wrote a letter which included the following:

“Please be advised that ... became a resident of [REDACTED] on [REDACTED]... New Beginnings is a transitional housing community established to service the needs of recovering addicts and alcoholics. We are dedicated to providing a clean, safe, and sober environment for our residents. We strictly enforce a ‘zero tolerance’ policy which includes mandatory drug testing and alcoholic testing... Residents are expected to have a job and remain gainfully employed... [Claimant] secured employment shortly after her arrival here, and she has remained employed since.”

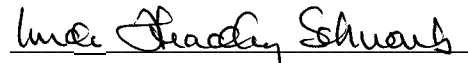
The hearing record does not include any medical evidence or documentation following claimant’s [REDACTED], discharge from the hospital. Claimant acknowledged at the hearing that she can work and support herself. Claimant has not met her burden of proof that she has an impairment that is severe or significantly limits her physical and mental ability to perform basic work activities necessary for most jobs. The evidence 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 “disabled” for purposes of MA.

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 standards for at least 90 days. Therefore, the undersigned concludes 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 the Medical Assistance and State Disability Assistance programs. 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: March 30, 2010

Date Mailed: March 31, 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:

