

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.: 2010-9986
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
February 24, 2010
Wayne County DHS (55)

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 24, 2010. Claimant appeared and testified. 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) 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 August 24, 2009, claimant filed an application for MA-P and SDA benefits. Claimant did not request retroactive medical coverage.
- 2) On October 12, 2009, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
- 3) On October 19, 2009, a hearing request was filed to protest the department's determination.
- 4) Claimant, age 52, has an eleventh-grade education and has completed a GED.
- 5) Claimant's last formal employment was in 2007 as a hilo operator. Claimant had previously performed work as a diesel mechanic.
- 6) Claimant was incarcerated with the Department of Corrections from [REDACTED] [REDACTED]. Since his parole, claimant has occasionally helped oversee car repairs, unloaded produce at [REDACTED], and assisted with pricing and waiting on customers while selling produce.
- 7) Claimant has a history of alcohol and tobacco abuse.
- 8) Claimant currently suffers from a rash in the groin area diagnosed as tinea cruris.
- 9) Claimant 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 (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 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 reports that he is not currently working. It is noted that the record supports a finding that claimant is, at least occasionally, unloading produce at [REDACTED] and assisting with pricing and waiting on customers. Claimant also reported that, on an average day, he goes next door and oversees auto repairs. Nonetheless, due to lack of documentation, the record does not support a finding that claimant is currently engaged in substantial gainful activity. Accordingly, 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 this case, claimant was released from prison in [REDACTED]. Department of Corrections medical records indicate that claimant was treated for tobacco abuse and chronic right ankle pain. He sought emergency room treatment on [REDACTED], as a result of a rash in the groin area. The ER medical record indicates that claimant reported that he “works outside.” Claimant was diagnosed with tinea cruris. Claimant sought emergency room treatment for his rash again on [REDACTED]. During that visit, claimant reported that he “works off and on at the [REDACTED] unloading produce.” During the [REDACTED], ER visit, claimant reported that the onset of his rash was one month ago. Claimant was again diagnosed with tinea cruris and provided a topical cream to use on the rash. There have apparently been no further hospitalizations. Claimant has been diagnosed with tinea cruris. Claimant has established that he has an impairment. But, he has not met his burden of proof that he has an impairment that is severe or significantly limits his physical or mental ability to perform basic work activities necessary for most jobs. At the hearing, claimant testified that, in an average day, he goes “next door” to an auto shop and oversees auto repairs. Claimant also testified that he assists his cousin in selling produce at [REDACTED]. During his emergency room visits in [REDACTED], claimant reportedly told hospital personnel that he worked on and off unloading produce at [REDACTED] and that he works outside. The evidence fails to support claimant’s position that he 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.

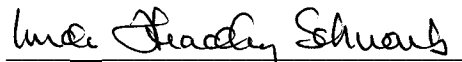
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R

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 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 the Medical Assistance and State Disability Assistance programs. Accordingly, the department’s determination in this matter is hereby affirmed.


Linda Steadley Schwarz
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 25, 2010

Date Mailed: May 26, 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

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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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