

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.: 2010-12295
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
February 1, 2010
Oakland County DHS (04)

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 1, 2010. Claimant appeared and testified with the assistance of a translator. Claimant was represented by [REDACTED]. Following the hearing, the record was kept open for the receipt of additional medical evidence. No additional materials were received.

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 22, 2008, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to July of 2008.

- 2) On June 10, 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 56, has a third-grade education from [REDACTED]. Claimant does not speak, read, or write in English.
- 5) Claimant's work history is unclear. Claimant may have been working as recently as May of 2009.
- 6) Claimant has a history of smoking.
- 7) Claimant was hospitalized [REDACTED] as a result of acute bronchitis. Claimant was reported to have been recently diagnosed with chronic obstructive pulmonary disease.
- 8) At the hearing, the undersigned Administrative Law Judge ordered the department to set up and pay for a consulting internist's evaluation of claimant per the recommendation of the State Hearing Review Team. The authorized representative was requested to obtain hospital records from [REDACTED] as well as a statement of claimant's work history for the last fifteen years.
- 9) Despite due notice, claimant failed to attend her scheduled consultative exam and did not provide a good reason for her failure to attend the scheduled appointment.
- 10) Claimant's authorized representative reported that no additional hospital records were located. Claimant's work history was not submitted.

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.

At the hearing, the undersigned Administrative Law Judge ordered the department to set up and pay for a consulting internist's examination for claimant per the recommendation of the State Hearing Review Team. Claimant's authorized representative was asked to submit any additional hospital records from [REDACTED] as well as a statement of claimant's work history for the last fifteen years. Unfortunately, despite due notice, claimant failed to attend her scheduled consultative exam. Claimant failed to provide any good cause reason for her failure to attend the consultative exam. Federal regulation has the following to say regarding claimant's failure to appear at a consultative exam:

If you are applying for benefits and do not have a good reason for failing or refusing to take part in a consultative examination or a test which we arranged for you to get information we need to determine your disability or blindness, we may find that you are not disabled or blind. 20 CFR 416.918(a).

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

COMPLETENESS

The evidence in your case record, including 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

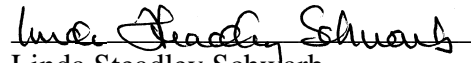
3. Your residual functional capacity to do work-related physical and mental activities...

In this case, there is insufficient medical evidence regarding claimant's medical condition. Claimant's hospital records from her two-day admission in [REDACTED] are the only medical records contained in the hearing record. Despite due notice, claimant failed to attend her scheduled consultative exam. Claimant's authorized representative was unable to locate additional hospital records and, despite a request from the undersigned Administrative Law Judge, no statement of claimant's work history was submitted. Thus, the hearing record contains no reliable information as to claimant's work history or work status and inadequate information as to claimant's medical status during the time period in question. 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 for program benefits. 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 in this matter must be affirmed.

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 decision in this matter is hereby affirmed.


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

Date Signed: June 15, 2010

Date Mailed: June 15, 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:

