

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2010-42246
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: August 25, 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 August 25, 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 January 19, 2010, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to December of 2009.
2. On April 1, 2010, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
3. On June 28, 2010, a hearing request was filed to protest the department's determination.
4. Claimant, age 36, has a high-school education and some college.
5. Claimant last worked in 2003 as a home health care worker. Claimant has also performed relevant work as a delivery person, auto detail person, stock person,

and prep cook. Claimant's relevant work history consists exclusively of unskilled work activities.

6. Claimant has a history of Crohn's disease and testicular cancer with surgical intervention in 2008.
7. Claimant was hospitalized [REDACTED], as a result of a right patellar tendon rupture which occurred while running. Claimant underwent surgical repair. Claimant has had no further hospitalizations.
8. Claimant is currently a recipient of the Adult Medical program and has access to doctor visits and prescriptions.
9. Claimant utilizes his Adult Medical program benefits through yearly check-ups with a gastroenterologist (last colonoscopy in [REDACTED] was good) and yearly check-ups with his oncologist (last CT scan was clear). Claimant has not used the Adult Medical program for routine or other medical care and takes no prescriptions.
10. Claimant complains of right knee pain and weakness, abdominal pain, and depression. Despite his access to medical care, claimant has not sought medical intervention for these complaints.
11. Claimant 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 working. 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:

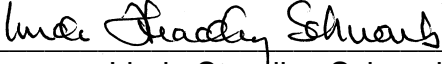
- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Claimant has a history of Crohn's disease, testicular cancer, and a [REDACTED] right patellar tendon rupture with surgical repair. Claimant may well have some limitations as a result of his medical condition. But, the record does not support a finding that claimant has an impairment that is severe or significantly limits his physical or mental abilities to perform basic work activities necessary for most jobs. On [REDACTED] claimant's treating oncologist opined that claimant has no physical or mental limitations. Claimant reported that he sees his oncologist on a yearly basis. Claimant indicated that his last CT was clear. Following the [REDACTED] right patellar tendon rupture which occurred while running, claimant underwent surgical repair. Although claimant is a recipient of the Adult Medical program and, thus, has access to medical treatment and prescriptions, claimant has not sought any follow-up care. Claimant also reported that he sees his treating gastroenterologist on a yearly basis to monitor his history of Crohn's disease. Claimant testified that his last colonoscopy was in [REDACTED] and was "good." Claimant reported depression but acknowledged that he has not recently sought any medical intervention. Claimant testified that he spends most of his day as a "big brother" to his mother's foster children. The hearing record 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.

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: August 26, 2010

Date Mailed: August 27, 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.

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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:

