

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.: 2010-45265  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date: September 9, 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 9, 2010. Claimant appeared and testified. Claimant was represented by [REDACTED]. Following the hearing, the record was kept open for the receipt of additional medical evidence. No additional documents were submitted.

**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 April 12, 2010, an application was filed on claimant's behalf for MA-P benefits. The application requested MA-P retroactive to March of 2010.
2. On April 26, 2010, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.
3. On May 17, 2010, a hearing request was filed to protest the department's determination.
4. Claimant, age 49, is a high-school graduate who completed a trade school program in electronic technology.

5. Claimant last worked in February of 2010 as general laborer in construction and home remodeling. Claimant has had no other relevant work experience.
6. Claimant has no significant medical history.
7. Claimant was hospitalized [REDACTED] following a fracture of the left femur. He underwent open reduction and internal fixation with intramedullary nailing of the left femur.
8. Claimant has had no further hospitalizations.
9. At the time of the hearing, claimant was a recipient of the Food Assistance Program and Adult Medical Program.
10. Following claimant's leg fracture, claimant had outpatient follow-up visits at an orthopedic clinic on [REDACTED], [REDACTED], and [REDACTED]. All x-rays and examinations indicated continued healing of claimant's left femur fracture with all hardware intact and in place. Claimant denied numbness and paresthesias in his left lower extremity.
11. The allegations concerning claimant's impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, do not reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity for a continuous period of not less than twelve months.

### **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, 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, prior to claimant's leg fracture in [REDACTED], claimant had no serious medical problems. On [REDACTED], claimant sustained a fracture of his left femur. He underwent open reduction and internal fixation with intramedullary nailing of the left femur. Thereafter, claimant was seen on an outpatient basis at an orthopedic clinic on [REDACTED], [REDACTED], and [REDACTED]. During all evaluations, x-ray imaging and examinations indicated continued healing of the fracture with all hardware intact and in place. At the hearing, claimant testified that he performs household chores such as washing dishes, occasional vacuuming, and light food preparation.

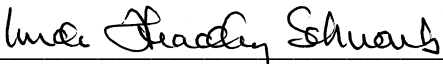
A careful review of the entire record finds no support for the suggestion that claimant has limitations which can be expected to result in the inability to perform any substantial gainful activity for a continuous period of not less than twelve months. At the time of the hearing, claimant was a recipient of the Adult Medical Program and, thus, had access to ongoing medical care and treatment. Following the hearing, the record was left open to provide claimant with an opportunity to obtain and submit additional documentation. No additional documentation was submitted. The record fails to provide the required medical data and evidence necessary to support a finding that claimant has an

impairment which can be expected to prevent the performance of substantial gainful activity for the twelve-month durational requirement. Accordingly, the undersigned must find that the department properly determined that claimant is not eligible for MA based upon disability. Even if claimant is unable to return to his former job as a general laborer in construction and home remodeling, he is clearly capable of performing light work on a regular and continuing basis. See Med Voc Rule 202.17. Accordingly, the undersigned must find that claimant is not "disabled" for purposes of the MA program.

**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: November 17, 2010

Date Mailed: November 18, 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:

