

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Claimant

Reg. No: 2008-17670

Issue No: 2009/4031

Case No:



Load No:

Hearing Date:

November 20, 2008

Wexford County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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 telephone hearing was held on November 20, 2008. Claimant and his father personally appeared and testified.

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA) and State Disability Assistance (SDA) eligibility standards?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) Claimant is an unmarried, 28-year-old high school graduate with one year of college whose primary residence has been with his parents most of his life, per self report (Department Exhibit #1, pgs 3, 15 and 16).

(2) Claimant has an extensive polysubstance abuse history; additionally, he has spent various periods of time in jail or prison on drug related charges resulting in the loss of his driver's license secondary to multiple DUIs (Department Exhibit #1, pgs 8-9 and 19).

(3) As of claimant's November 20, 2008 disability hearing date, he reported he had not used any alcohol or illicit substances since spending three days in a detox center in August 2008; additionally, he professed to regular attendance at an outpatient substance abuse group for recovering addicts.

(4) An August 2008 [REDACTED] initial plan of service documents claimant's expressed willingness to participate in getting his substance abuse under control, getting his pain under control and obtaining a stable living environment with cash assistance and adequate insurance (New Medical Evidence, pg 2).

(5) Claimant's [REDACTED] diagnosis is Bipolar Disorder NOS; his ongoing psychotropic stabilizing medications have been [REDACTED] and [REDACTED] since they were initially prescribed during his July 2008 psychiatric hospitalization at [REDACTED] (Client Exhibit A, pgs 7 and 8).

(6) Claimant's hospital summary record states in relevant part:

The patient was educated on the benefits, risks, and alternatives to treatment and he signed consent to start psychotropic medications. The length of stay is approximately 3-5 days. Prognosis is fair considering that this is the patient's first psychiatric hospitalization but one factor that worsens his prognosis is his substance addiction (New Medical Evidence, pg 11).

(7) On February 8, 2008, claimant filed an application for disability-based MA (insurance) and monthly cash assistance (SDA) six months before he stopped using drugs/alcohol (See Finding of Fact #3 above).

(8) Claimant alleges his Bipolar Disorder and his chronic, excruciating, debilitating low back pain, head pain and generalized myalgias/arthralgias stemming from two remote motor vehicle accidents cause him to be completely unable to engage in any type of substantial gainful work activity.

(9) Claimant has a history of heavy, unskilled work as a canoe livery attendant (seasonal) but he has not worked there (or anywhere else consistently) in several years (Department Exhibit #1, pgs 3 and 16; Client Exhibit A, pg 6; New Medical Evidence, pg 20).

(10) On February 2, 2008, claimant underwent an independent physical examination; he told the examining physician his car accidents happened in 2000 and 2005 (Department Exhibit #1, pg 3).

(11) Claimant's October 31, 2005 left elbow and left forearm x-rays are negative, as is his November 29, 2005 lumbar spine MRI scan (except minimal L4-L5 and L5-S1 bulging annulus fibrosis); his December 5 and 12 2005 brain CT scan and right knee x-rays were also normal (Department Exhibit #1, pgs 65-68).

(12) Claimant's updated lumbar spine MRI scan, dated August 26, 2008, notes no significant change from the prior study (New Medical Evidence, pgs 8 and 9).

(13) Claimant's updated [REDACTED] progress report (2/20/09) notes he presented with broad affect, full orientation and good judgment (New Medical Evidence, pg 6).

(14) Likewise, claimant's February 23, 2009 [REDACTED] progress report notes his thoughts and ideas were clear and he was goal/future oriented; his main concern he had no income and no place to live (New Medical Evidence, pg 5).

(15) Claimant's counselor stated in relevant part:

...[Claimant] stated that he didn't feel that his appointment with the attorney on Friday went very well. Worker asked for

clarification as to why he felt that way. He stated that he didn't really get anywhere and he still doesn't have any money. Worker stated that maybe he should try and find a part-time job like the attorney stated. [Claimant] stated that he was told before when he had a job that he needed to quit because it would help him get social security...(New Medical Evidence, pg 5).

(16) At claimant's application denial hearing, claimant contended his mental problem was the main reason he couldn't work, but his back hurts, too.

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).

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).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...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

The SDA program differs from the federal MA regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Basic work activities are 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).

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

Additionally, Social Security Ruling 96-4p (SSR 96-4p) states in relevant part:

A “symptom” is not a “medically determinable physical or mental impairment” and no symptom by itself can establish the existence of such an impairment. In the absence of a showing that there is a “medically determinable physical or mental impairment,” an individual must be found not disabled at Step 2 of the sequential evaluation process. No symptom or combination of symptoms can be the basis for a finding of disability, no matter how genuine the individual’s complaints may appear to be, unless there are medical signs and laboratory findings demonstrating the existence of a medically determinable physical or mental impairment.

In addition, 20 CFR 404.1529 and 416.929 provide that an individual’s symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect the individual’s ability to do basic work activities...unless medical signs and laboratory findings show that there is a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the symptom(s) alleged.

Furthermore, it must be noted the law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant’s pain can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered.

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3)

the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).

4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

Claimant is not disqualified from receiving MA/SDA at the threshold level (Step 1) because he has not been gainfully employed in several years. As such, the analysis must continue.

At Step 2, the testimony of record clearly establishes claimant was engaged in ongoing substance abuse at all times relevant to his disputed application, filed February 8, 2008. In fact, the record reveals multiple instances of recurrent relapse which leads this Administrative Law Judge to conclude claimant's testimony regarding his steadfast abstinence since August 2008 is less than credible and likely uttered solely for secondary gain (MA/SDA approval).

The current federal regulations are clear. Drug addiction and/or alcoholism disqualifies an applicant from disability benefits if those conditions are a material, contributing factor to his or her inability to engage in substantial gainful activity. Put simply, federal law no longer permits a finding of disability for those persons whose primary impairment is substance abuse/dependency (PL 104-121). This same standard is applied in SDA cases.

"Material to the determination" means that, if the applicant stopped using drugs or alcohol, his or her remaining limitations would not be disabling. This Administrative Law Judge finds claimant's continued polysubstance abuse was the major contributing factor to his inability to look for work or remain employed during the disputed period. As such, claimant's application must remain denied based on the materiality of ongoing substance abuse.

However, even if claimant's ongoing substance abuse was not material, he would still be unsuccessful in establishing a legally disabling condition. This is because he has not presented any objective medical evidence to establish the presence of a physical or mental condition supportive of a reason for his severe, chronic and pervasive mental/physical symptoms. In fact, none of claimant's physical test results reveal anything other than normality, except for some minimal disc bulging in his lower lumbar spine. Likewise, the record shows claimant's mental symptoms and emotional stability are fully capable of stabilization as long as compliance with his current psychotropic medication schedule is maintained. Consequently, this Administrative Law Judge finds claimant is fully capable of performing any number of unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. Thus, an alternative basis exists for denial in this case, specifically, lack of a legally disabling condition shown.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly determined claimant is not disabled by MA or SDA eligibility standards.

Accordingly, the department's action is AFFIRMED.

/s/

Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 19, 2009

Date Mailed: November 20, 2009

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 receipt 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.

MBM/db

cc:

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