

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: 2008-17957

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

September 11, 2008

Livingston 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 September 11, 2008. Claimant and her mother 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 a single, 28-year-old high school graduate with three years of post-secondary education incurred at [REDACTED] and [REDACTED]

[REDACTED]

(2) Claimant stated at her disability hearing on September 11, 2008 she stays with her finance, her mother or her grandmother because she has no money to get a place of her own.

(3) Claimant is a certified EMT and her past relevant work experience includes being an EMT-B instructor and an Emergency Room technician until February 2006 (Department Exhibit #1, pg 6).

(4) Claimant testified at hearing she has worked at trying to get another job since then.

(5) Claimant has been diagnosed with a Borderline Personality Disorder and Bulimia.

(6) Additionally, claimant has an extensive alcohol abuse history; despite outpatient substance abuse treatment in 2003 at [REDACTED] her records reveal recurrent relapse.

(7) Specifically, claimant's treating doctor at the [REDACTED] provided the following written information, dated May 1, 2008:

She was evaluated in the emergency room at [REDACTED] on 3/19/08 and 3/28/08 for suicide attempts by overdose on sleeping medications, each while intoxicated with triggers of interpersonal conflict. She additionally required evaluation at [REDACTED] on 4/23/08 for suicidal ideation, cutting and intoxication during another interpersonal conflict. She has been referred to addiction treatment services as well because alcohol consumption has become a major factor in worsening her recent impulsive suicidal and parasuicidal behaviors related to her major depressive and borderline personality disorders (Client Exhibit A, pg 7).

(8) Claimant stated at her disability hearing on September 11, 2008 her current stabilizing medications are [REDACTED]

(9) Claimant applied for disability-based MA/SDA on December 21, 2007.

(10) A Mental Residual Functional Capacity Assessment (DHS-49) completed by claimant's treating [REDACTED] doctor on December 26, 2007 assesses her with insignificant or

moderate personal limitations in the four areas of mental/emotional/social functioning required to be assessed during the disability determination process; additionally, this doctor rated claimant's Global Assessment Function (GAF) at 55-65 over that past year (Department Exhibit #1, pgs 12-14).

(11) As of January 2, 2008, claimant's treating doctor indicated she was fully oriented with intact high cognitive function and she displayed fair to good attention/insight/judgment (Department Exhibit #1, pg 11).

(12) On May 19, 2008 and May 27, 2009, the department's State Hearing Review Team (SHRT) issued pre and post-hearing decisions concurring with the local department's initial disability denial.

(13) SHRT's post-hearing decision dated May 27, 2009 states in relevant part:

The claimant's impairments do not meet/equal the intent or severity of a Social Security listing.

The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of unskilled work using vocation rule 204.00 (20 CFR 416.968) as a guide. MA-P and retroactive MA-P are denied.

SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

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.

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).

In addition, when we evaluate the severity of mental impairments for adults (persons age 18 and over), we must follow a special technique at each level in the administrative review process. 20 CFR 416.920a(a).

Under the special technique, we must first evaluate your pertinent symptoms, signs, and laboratory findings to determine whether you have a medically determinable mental impairment(s). 20 CFR 416.920a(b).

We must then rate the degree of functional limitation resulting from the impairment(s) in accordance with paragraph (c) of this section and record our findings as set out in paragraph (e) of this section. 20 CFR 416.920a(b).

We have identified four broad functional areas in which we will rate the degree of your functional limitation: activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation. 20 CFR 416.920a(c).

When we rate the degree of limitation in the first three functional areas (activities of daily living; social functioning; and concentration, persistence, or pace), we will use the following five-point scale: none, slight, moderate, marked, and extreme. When we rate the degree of limitation in the fourth functional area (episodes of decompensation), we will use the following four-point scale: none, one or two, three, four or more. The last is incompatible with the ability to do any gainful activity. 20 CFR 416.920a(c).

After we rate the degree of functional limitation resulting from the impairment(s), we will determine the severity of your mental impairment(s). 20 CFR 416.920a(d).

If we rate the degree of your limitation in the first three functional areas as “none” or “mild” and “none” in the fourth area, we will generally conclude that your impairment(s) is not severe, unless the evidence otherwise indicates that there is more than a minimal limitation in your ability to do any basic work activities. 20 CFR 416.920a(d)(1).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

At Step 1, the evidence of record reveals claimant has not been gainfully employed since 2006; consequently, the analysis must continue.

At Step 2, no physical impairments have been alleged or shown. Additionally, claimant has failed to establish the existence of any severe mental impairment of the continuous durations necessary to support her disability claim. While she does have a psychiatric treatment history,

her periods of inability to function are intermittent, and thus, they cannot be deemed to last, or have lasted for 12 continuous months (or 90 continuous days for SDA), which is required for finding of disability. Likewise, claimant's exacerbated depressive episodes appear to be the primary result of relapse into alcohol abuse.

It must be noted the federal regulations do not allow drug addiction or alcoholism to qualify as disabling, if either (or both) are material, contributing factors to an applicant's ability to engage in substantial gainful work activity. The state and federal laws simply no longer permit a finding of disability for those persons whose primary impairment is substance abuse/dependency.

"Material to the determination" means that, if the individual stopped using drugs or alcohol, his or her remaining mental and/or physical limitations would not be disabling. This Administrative Law Judge finds claimant's continued alcohol relapse is the major contributing factor to many of the symptoms she describes, including elevated depression, insomnia, poor memory, mood swings, confusion, anxiety, etc. This Administrative Law Judge finds, from the medical evidence of record, as long as claimant remains in alcohol remission and in compliance with her prescription medication schedule, her mental condition is stable. With that stability comes the residual functional capacity to engage in any number of unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. As such, this Administrative Law Judge concurs with the department's SHRT decision issued on May 27, 2009 (See Finding of Fact #13 above).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly denied claimant's December 21, 2007 MA/SDA

application based on a finding that she does not meet the criteria necessary to qualify for disability assistance.

Accordingly, the department's action is AFFIRMED.

/s/

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

Date Signed: October 8, 2009

Date Mailed: October 9, 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

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