

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: 2008-23225/2009-3265
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 25, 2009
Kent 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, an in-person hearing was held on March 25, 2009. Claimant personally appeared and testified.

ISSUE

Did the department properly deny claimant's January 28, 2008 State Disability Assistance (SDA) application and his July 11, 2008 Medicaid (MA) application?

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 28, 2008, claimant filed a disability-based application for a monthly cash grant (SDA only), which the department denied by written notice mailed April 17, 2008 (Department Exhibit #1, pgs 2 and 3).

(2) On July 11, 2008, claimant reapplied for SDA, and also, he filed a disability-based application for medical coverage with retroactive coverage requested to April 2008 (MA/retro-MA).

(3) This time, the department approved SDA benefits but denied MA/retro-MA coverage by written notice dated September 8, 2008 (Department Exhibit #1, pgs 390 and 391).

(4) Claimant requested timely hearings on the above-referenced MA and SDA denials; consequently, his complaints were consolidated for administrative efficiency and heard together at a hearing held on March 25, 2009 (Register Numbers 2008-23225 and 2009-3265).

(5) Claimant alleges a combination of diagnosed mental and physical impairments render him completely incapable of engaging in any type of substantial gainful work activity for MA/SDA eligibility purposes.

(6) Claimant is a single, right-handed, 49-year-old chronic smoker having no valid driver's license for more than twenty years who lives independently in low income housing.

(7) Claimant is a high school graduate with no relevant work history having been unemployed for more than fifteen years.

(8) When employed claimant performed sporadic, unskilled general labor jobs (restaurant and handyman work), but his extensive polysubstance abuse history ([REDACTED]) materially interfered with his ability to obtain and/or to remain employed (Department Exhibit #4, pgs 1 and 2).

(9) Claimant's July 11, 2008 temporary cash grant (SDA) was approved based on a past cardiac problem, specifically, a 70% blocked left anterior descending artery (LAD) which was successfully stented during an overnight hospitalization (4/14/08-4/15/08), thus reducing claimant's blockage to zero percent (Department Exhibit #2, pgs 318-327).

(10) Medical records from claimant's treating provider, [REDACTED] dated November 6, 2008 (4 months after MA/SDA application filing), indicate claimant's reported exertional shortness-of-breath symptoms (chronic dyspnea) are more likely pulmonary related than cardiac in nature (Client Exhibit A, pg 3).

(11) Claimant continues to smoke tobacco despite repeated medical advice to the contrary (Client Exhibit A, pg 3).

(12) Diet and exercise also have been medically recommended because claimant is medically obese at 5'10" tall and 265 pounds (BMI=38.0)(Department Exhibit #2, pg 349; Client Exhibit A, pg 3).

(13) Claimant's medical records verify the presence of high blood pressure and high cholesterol, not uncommon in obese patients and fully capable of adequate control as long as claimant's medication compliance is maintained (e. g., [REDACTED] (Department Exhibit #5, pg 1; Client Exhibit B, pg 1).

(14) Claimant's November 6, 2008 pulmonary function test (PFT) confirms severe obstructive disease with no significant improvement post-bronchodilator and minimal lung improvement even if smoking cessation occurs (Client Exhibit A, pgs 3-6).

(15) Claimant has a remote Bipolar Diagnosis dating back to at least 2004, according to the medical records submitted to date (Department Exhibit #1, pgs 253-257).

(16) Claimant has participated intermittently in outpatient mental health counseling over the past six years.

(17) As of claimant's March 2009 independent psychological examination month, and also, his disability hearing month, he was not engaged in any outpatient counseling services but

his primary care physician was prescribing psychotropics for mood stabilization, which included [REDACTED] (Department Exhibit #4, pg 3; Client Exhibit B, pg 1).

(18) In addition to claimant's Bipolar Diagnosis, the independent psychologist added Mixed Personality Disorder (with passive/avoidant features) to claimant's mental impairment list and stated in relevant part:

...This man is plagued by character features. He has a profound sense of self doubt and helplessness which suggests passive and avoidant features in his personality. Employability can be directly affected by this because it prevents decisive engagement or completion of therapy. He has dropped his prior treatment because he did not like his therapist or psychiatrist, and this may have represented simply a collapse of effort or his response to challenges to complete treatment. This factor along with a possible trend to over-report symptoms means that similar cases need to be scrutinized extremely carefully. This is especially true because disability payment seeking may be part of a trend toward abdication, that makes treating his symptoms and obtaining objective report and information, as well treatment compliance, difficult...

....I am quite concerned that this person does not have ongoing psychiatric treatment and regular educative counseling to help optimize medication response. He is a dropout from outpatient mental health therapy. His report, if accurate, is not showing improvement of racing thoughts, over-arousal, and associated psychotic like features. If this in fact is true, treatment needs to be instituted. He appears to have voluntarily quit treatment and has not sought new treatment which makes his true response to treatment, and long-term employability prospects murky at best. A novel anti psychotic in combination with antidepressant may be needed, particularly in light of his report of racing thoughts and thought process dyscontrol. These features of distress and dysfunction in light of his long history of [REDACTED] and [REDACTED] use should make it mandatory that he engage in outpatient psychiatric treatment with regular reports of progress before permanent disability is established...

...The primary obstacle to employability is mood fluctuations and its intended impact upon his ability to accept challenges and social exposure. Therefore initial placement, should he attempt trial placement, should be in the area of routine procedural work with close social support. Unskilled building maintenance or grounds keeping would be examples. Simple machine operation would also be a possibility, but this, of course, would need medical clearance by his physician...(Department Exhibit #4, pgs 4 and 5).

(19) Claimant stated at hearing he has a chronic tremor in his right hand, but neither his March 18, 2009 independent physical examination nor his May 2, 2009 independent psychological examination make mention of this reported symptom, and in fact, the physical examination narrative expressly notes full fist, full grip strength, unimpaired dexterity and adequate pincher grasp in both claimant's upper extremities (Department Exhibit #5, pg 2).

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.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

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).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

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).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls....

20 CFR 416.967(b).

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).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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 Step 1, because he has not been gainfully employed in several years.

At Step 2, claimant's diagnosed impairments, in combination, have left him with some believable exertional and non exertional symptoms. However, claimant's current prescription medications appear fully capable of adequate management, given the objective medical evidence presented.

Furthermore, it must be noted the law does not require an applicant to be completely symptom free before a finding of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. Nevertheless, this Administrative Law Judge finds claimant's

medically managed physical and mental impairments, when combined meet the *de minimus* level of severity and duration required for further analysis.

At Step 3, the medical evidence on this record does not support a finding that claimant's diagnosed impairments, standing alone or combined, are severe enough to meet or equal any specifically listed impairments; consequently, the analysis must continue.

At Step 4, an analysis of claimant's past relevant work history is not required because the claimant has none (See Finding of Fact #7 above). As such, this analysis must continue.

At Step 5, an applicant's age, education and previous work experience (vocational factors) must be assessed in light of all documented impairments. Claimant is a younger individual with a high school education and no relevant work history. Consequently, at Step 5, this Administrative Law Judge finds, from the medical and psychological evidence of record, that claimant retains the residual functional capacity to perform unskilled light work, as that term is defined above, despite his documented impairments. This finding is consistent with the independent psychologist's assessment, and also, with a previous Hearing Decision denial dated November 23, 2005 (Department Exhibit #1, pgs 91-100; Department Exhibit #4, pgs 1-5).

Claimant's primary barrier to employability appears to be his complete lack of connection to the competitive workforce. Claimant should be referred to [REDACTED] [REDACTED] for assistance with job training and/or placement consistent with his skills, interests and abilities. Claimant is not disabled under the MA/SDA definitions because he is physically and mentally capable of performing any number of unskilled, light work jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. As such, claimant's disputed applications must remain denied.

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 disaabled by MA/SDA eligibility standards.

Accordingly, the department's disputed denial actions are AFFIRMED.

/s/

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

Date Signed: March 16, 2010

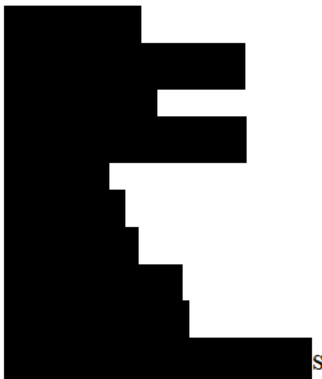
Date Mailed: March 16, 2010

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 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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