

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: 2008-23782  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
September 3, 2008  
Genesee 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 September 3, 2008. Claimant personally appeared and testified. He was assisted by

[REDACTED]

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA) 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 married, 52-year-old smoker with a general equivalency diploma (GED) and some post-secondary education at bible college.

(2) Claimant stands approximately 5'9" tall and weighs approximately 160 pounds; he is right hand dominant.

(3) Claimant has an extensive substance abuse history including [REDACTED] and [REDACTED] (Department Exhibit #1, pgs 4, 16 and 18).

(4) Claimant has a remote Bipolar Diagnosis.

(5) Claimant has a history of unskilled, seasonal golf course maintenance, but he claims not to have worked in this capacity or any other place since the 2006 season ended (Department Exhibit #1, pgs 3 and 16).

(6) Claimant was admitted to the hospital in September 2007 because he had a severe bipolar episode (9/10/07-9/13/07)(Department Exhibit #1, pg 27).

(7) Claimant tried to commit suicide by [REDACTED] overdose (Department Exhibit #1, pg 14).

(8) While hospitalized cardiac testing ruled out a [REDACTED] myocardial infarction and any other acute cardiac disease (Department Exhibit #1, pg 23).

(9) The intake evaluation from that hospitalization indicates claimant had not taken any psychotropic medications in six months, and also verifies a history of chronic noncompliance with treatment (Department Exhibit #1, pgs 14, 16 and 33).

(10) Claimant was referred to outpatient psychiatric counseling at hospital discharge in September 2007; at his September 3, 2008 hearing, he reported he finally initiated said counseling three months earlier (6/08)([REDACTED]).

(11) Claimant initiated this counseling because he had a second bipolar hospitalization between May 23, 2008 and June 13, 2008 (Client Exhibit A, pgs 1-29).

(12) Claimant's May 28 hospital records confirm he was noncompliant with the recommended psychiatric treatment, he was intoxicated at admission and he was still actively using [REDACTED] (Client Exhibit A, pg 1).

(13) At claimant's September 2008 hearing he alleged no alcohol or drug use since initiating outpatient counseling after his second bipolar episode (See also Finding of Fact #10 and #11 above).

(14) At hearing, claimant admitted he remains stable as long as medication compliance is maintained, specifically he said, "I'm alright."

(15) Claimant reports his ongoing symptoms include daily racing thoughts, confusion and a poor memory; his wife helps remind him to take his psychotropic medications ([REDACTED]).

(16) After claimant's September 2007 hospitalization but before his May 2008 one, he underwent an independent psychological evaluation.

(17) Claimant's short term memory skills were not noted to be significantly impaired and he was fully oriented with good verbal skills/sound judgment (Department Exhibit #1, pgs 3-5).

(18) Claimant's reported hobbies include building birdhouses, fishing and visiting friends; however, he does not have a valid driver's license due to unpaid fines (Department Exhibit #1, pgs 3 and 4).

(19) Claimant is completely independent in all self cares and basic living activities; additionally, he shares cleaning, cooking, shopping, dishwashing, etc. with his wife, and also, he maintains the outdoor upkeep on their property (Department Exhibit #1, pg 3).

(20) On December 20, 2007, claimant applied for disability-based MA/retro-MA.

(21) At his hearing claimant admitted he was alleging disability based solely on his mental impairment, consistent with the medical evidence submitted which does not establish the existence of any severe physical impairments.

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).

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 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 whether an individual is legally disabled, 20 CFR 416.920 requires the trier-of-fact to follow a five-step, sequential evaluation process by which current work activity, the severity of the impairment, residual functional capacity and vocational factors like age, education and past work experience are assessed, in that order. If disability can be ruled out at any step, analysis of the next step is not required.

First, the trier-of-fact must determine if the individual is working, and if so, whether that work constitutes substantial gainful activity. 20 CFR 416.920(b). In this case, claimant allegedly stopped doing any type of paid work in 2006. (See Finding of Fact #5 above). As such, the analysis must continue.

At Step 2, the law provides that, if treatment (or medication) has been prescribed which would be expected to restore an applicant's ability to work, and that applicant fails to follow the treatment without good reason, the disability is considered to have ended in the first month in which the treatment/medication was not followed. 20 CFR 416.994(b)(4)(iv). In this case, the record reveals multiple instances of mediation and counseling noncompliance which would reasonably be expected to restore claimant's emotional stability, in favor of his ongoing polysubstance abuse instead. As such, claimant's disputed application shall remain denied based on failure to follow prescribed treatment.

Additionally, a second basis exists for the denial of claimant's disputed application. Specifically that his chronic, ongoing polysubstance abuse is material to his disability because it negatively impacts his entire lifestyle and significantly undermines any return to the competitive work force.

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).

“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 that long-term abstinence from polysubstance abuse, in combination with adherence to claimant’s prescribed medication/counseling schedules would have significantly decreased his symptoms to the point where he would have been fully capable of maintaining any number of simple jobs currently existing in the national economy, including returning to golf course maintenance. Therefore, the materiality of ongoing substance abuse also disqualifies claimant from receipt of benefits during the disputed period.

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 20, 2007 MA/retro-MA application because he did not/does not meet the criteria necessary for approval.

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: September 10, 2009

Date Mailed: September 11, 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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