

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: 2008-26189

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

September 23, 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 23, 2008. Claimant did not appear; however, he was represented 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 44-year-old smoker with a high school education and a work history which includes auto mechanics and self-employment in labor/construction (foundation jobs) (Department Exhibit #1, pgs 9 and 11; Client Exhibit A, pg 38).

(2) On March 10, 2008, a third party liability specialist [REDACTED] applied for MA/retro-MA for claimant because he had recently been diagnosed with left upper extremity deep venous thrombosis secondary to a Factor V Leiden mutation while inpatient at [REDACTED] (Department Exhibit #1, pg 13).

(3) Claimant was discharged on March 13, 2008 on the standard [REDACTED] therapy; however, he returned on March 17, 2008 with complaints of right-sided facial numbness, blurry vision, headaches and dizziness (Client Exhibit A, pgs 62-65).

(4) An extensive work-up was done which included magnetic resonance imaging, magnetic resonance angiography, magnetic resonance venography and magnetic resonance of the spine, all of which were within normal limits (Department Exhibit #1, pg 13).

(5) Claimant's Coumadin level was found to be subtherapeutic so he was started on it again during the hospital course and his PT and INR levels started to normalize (Client Exhibit A, pg 62).

(6) The neurological consultation done during this hospitalization states there was no pathology that could explain claimant's reports of pain crossing from one side of his head to the other; he opined the pain was related to psychological issues (Client Exhibit A, pg 64).

(7) On April 5, 2008, claimant re-entered the hospital with complaints of prolonged, intractable vomiting.

(8) The admission intake forms note claimant has a history of [REDACTED] abuse (Department Exhibit #1, pg 14).

(9) Claimant's [REDACTED] was again found to be in the subtherapeutic range, and this time the examining physician noted it could be secondary to noncompliance versus claimant's intractable vomiting (Department Exhibit #1, pg 15).

(10) A Venus Doppler of claimant's left upper extremity was done which did not show any progression of claimant's existing deep vein thrombosis (Department Exhibit #1, pg 13).

(11) At intake claimant was noted to have 5/5 motor strength in all four extremities with normal sensations and normal reflexes; he was fully oriented with no mood, memory or judgment impairments (Department Exhibit #1, pg 15).

(12) Claimant was treated at [REDACTED] on July 19, 2008 because he fell from a 14 foot high wall and hit a crane in [REDACTED] five days earlier, resulting in a concussion and a left foot injury (Client Exhibit A, pgs 12-14)(See also Finding of Fact #1 above).

(13) The doctors determined claimant had developed left leg cellulitis post trauma and he was started on standard antibiotic therapy with accompanying pain medications (Client Exhibit A, pg 14).

(14) A history of alcohol abuse also was noted; consequently, the doctors decided to start claimant on delirium tremens prophylaxis pending a check of his urine drug screen (Client Exhibit A, pg 14).

(15) During departmental processing of claimant's disputed disability application, they requested he appear at an independent physical examination scheduled on Tuesday, August 19, 2008, pursuant to the following policy:

Client Cooperation

The client is responsible for providing evidence needed to prove disability or blindness. However, you must assist the client when they need your help to obtain it. Such help includes the following:

- . Scheduling medical exam appointments
- . Paying for medical evidence and medical transportation
- . See PAM 815 and 825 for details. PEM, Item 260, p. 4. (Department Exhibit #1, pgs 38-45).

(16) Claimant did not appear at this appointment and he made no contact with the department after that date.

(17) Claimant's disability hearing was held the following month, on September 23, 2008.

(18) Claimant failed to appear at the hearing.

(19) Claimant's authorized representative contended claimant was disabled for only the closed period of eligibility between August, 2007 and August, 2008, because she understood he was in ██████ seeking employment as of the hearing date; claimant's ██████ departure date was not known (See also Finding of Fact #15 and #16).

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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

[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).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

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).

At Step 1, no competent documentary evidence or testimony was received to definitively determine claimant's employment status at any time after his brief, inpatient treatment for left leg cellulitis in July, 2008. However, it does appear claimant was working in a heavy exertional capacity before this hospitalization because he fell from a wall and hit a crane and no other plausible explanation for these activities exists, especially in light of the fact that those activities are consistent with claimant's reported work history (See Finding of Fact #1 and #12 above).

Furthermore, claimant does not qualify for the MA/retro-MA coverage sought because his authorized representative has not established the existence of any physical or mental condition severe enough to prevent employability for a continuous period of at least 12 months. While claimant had multiple hospitalizations between March and July 2008, most of them were related to claimant's subtherapeutic [REDACTED] levels secondary to left upper extremity deep vein thrombosis which was shown by Venous Doppler testing to be stable in July, 2008, and is fully capable of remaining stable as long as medication compliance is maintained.

Lastly, claimant failed to appear at his September 23, 2008 disability appeal hearing because by that time he was admittedly seeking work in [REDACTED]. Again, no competent, credible

evidence was submitted to establish precisely how long ago he left. Perhaps he had been there since discharge from the hospital in July, 2008, or perhaps he left in August, 2008. Either way, claimant's disability application must remain denied because absolutely nothing in this file establishes claimant was physically or mentally incapable of working in a wide variety of unskilled jobs for 12 continuous months. As such, claimant meets neither the severity nor durational levels required for a disability allowance.

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 eligibility standards.

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: July 30, 2009

Date Mailed: July 31, 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.

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