

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: 2008-26334

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 5, 2008

Oakland 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 5, 2008. Claimant 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, 22-year-old high school graduate and nonsmoker who lives alone in [REDACTED] (Department Exhibit #1, pgs 14 and 16).

(2) Claimant stands approximately 6'2" tall and weighs approximately 219 pounds, according to an independent physical examination narrative dated February 28, 2008 (Department Exhibit #1, pg 4).

(3) Claimant is fully independent in all self cares and basic daily living activities; his hobbies include working out and running every other day, per self report (Department Exhibit #1, pgs 10-13).

(4) Claimant has an unskilled work history (cook/assembly) but he was not employed when he filed his disputed disability application because he moved too far away from that fast food job in May 2006 (Department Exhibit #1, pg 17)(See also Finding of Fact #6 below).

(5) Claimant has a seizure disorder well controlled on current medication (██████████), according to an annual ██████████ evaluation dated February 27, 2008, which notes claimant's last seizure occurred in November 2007 (Department Exhibit #1, pg 22).

(6) On February 15, 2008, claimant applied for a disability-based monthly cash (SDA) and medical coverage (MA) because he had no job or income at that time (See also Finding of Fact #12 below).

(7) Claimant alleges he is disabled due to pain in his back, pain in his right knee and chronic depression; however, no objective medical tests (x-rays, MRI scans, CT scans, etc.) were submitted to objectively assess claimant's alleged physical impairments.

(8) Claimant was hospitalized briefly for depression with suicidal thoughts and superficial hand cuts in November 2007; the record notes he had been drinking for two or three days prior to this hospitalization and claimant admits he usually does not take his prescribed psychotropic medications when he drinks.

(9) Claimant has been attending outpatient counseling at [REDACTED] [REDACTED] ([REDACTED], a [REDACTED]) since 2006 (Department Exhibit #1, pg 21).

(10) Claimant's annual mental health evaluation dated February 27, 2008 notes he was stable on his prescribed psychotropic medications at that time ([REDACTED]) and indicates he was cautioned to take these medications as prescribed and to maintain abstinence from illicit drugs and alcohol (Department Exhibit #1, pg 26).

(11) Claimant has a history of illicit drug use ([REDACTED]) and [REDACTED] abuse (Client Exhibit A, pg 4).

(12) Updated mental health records from [REDACTED] dated November 4, 2008 indicate claimant started working in the kitchen of an Italian restaurant on June 15, 2008 and was still employed there as of November 2008 (Client Exhibit A, pgs 1 and 2).

(13) Claimant underwent an independent physical examination on February 28, 2008; no severe physical impairments were detected and claimant was fully oriented with no suicidal thoughts and completely intact judgment/insight, but he complained of ongoing fatigue and sleepiness which he attributed to his medications.

(14) As of claimant's November 5, 2008 disability hearing date, his only prescription medications were the anti-seizure medications and psychotropics listed above (See Finding of Fact #5 and #10 above).

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.

...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).

...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).

... [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 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 [SDA duration = 90 days]

...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).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

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)..

[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).

Claimant does not qualify for the MA/SDA disability coverage he seeks because he has not established the existence of a medically severe condition, or combination of conditions, which would prevent employability for the necessary durations required by MA and SDA program rules. In fact, the evidence of record establishes that, as of June 2008, claimant was employed as kitchen help in a local restaurant (See Finding of Fact #12 above). Nothing on this record indicates claimant is physically or mentally incapable of performing that type of work on a full time basis or of performing a wide variety of other unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases.

Therefore, claimant's disputed MA/SDA application 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 denied claimant's February 15, 2008 MA/SDA application.

Accordingly, the department's denial is AFFIRMED.

/s/

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

Date Signed: January 19, 2010

Date Mailed: January 20, 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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