

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: 2008-29098  
Issue No: 2009/4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
November 19, 2008  
Wayne 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 19, 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 an unmarried, 49-year-old high school graduate who has never obtained a driver's license; she currently resides with her sister.

(2) Claimant's past relevant work history is waitressing/cooking at [REDACTED] but she hasn't been employed there in over ten years since the restaurant she worked at closed (Department Exhibit #1, pg 5A).

(3) Claimant's September, 2007 hospital records verify tobacco/alcohol/crack cocaine/heroin/opioid abuse, as does a Medical Examination Report (DHS-49), dated April 7, 2008 (Department Exhibit #1, pg 6; Client Exhibit A, pg 1; New Medical Evidence, pgs 11 and 18).

(4) Claimant testified at hearing she stopped smoking cigarettes and drinking alcohol in 2007; however, a January 2, 2009 independent medical consultative examination indicates she continues to smoke a pack per day (New Medical Evidence, pgs 1 and 2)(See Finding of Fact #6 below).

(5) Claimant stands 5'0" tall and weighs 123 pounds; she is right hand dominant (New Medical Evidence; pg 2).

(6) Claimant reports chronic, debilitating back pain causes her to be unable to work, but the independent medical consultative examination (1/2/09) reveals full range of motion in all areas and claimant's medication schedule does not indicate any pain medications are being prescribed (New Medical Evidence, pgs 3-5).

(7) Eight months earlier (4/7/08), claimant's treating doctor completed a Medical Examination Report (DHS-49) indicating her asthma and congestive heart failure (CHF) were stable; he assessed her residual functional capacity (e. g., lifting, standing, walking, pushing/pulling, reaching, operating foot/leg controls) at a light exertional level (Client Exhibit A, pgs 1 and 2).

(8) Likewise, the Medical Needs form (DHS-54A) he completed attests to no restrictions on claimant's basic living activities and no need of special transportation or assistive ambulatory devices, then inconsistently/summarily concludes she can't work at her usual occupation or any other job (Client Exhibit A, pg 3).

(9) Claimant was hospitalized for three days in May, 2009 at [REDACTED]

(10) Claimant admitted to having smoked crack cocaine and drinking alcohol 1-2 days prior to admission, although she testified at hearing on November 19, 2008 she had not used cocaine or heroin for two years or more (New Medical Evidence, pg 13).

(11) Claimant's acute renal failure, CHF exacerbation and sinus tachycardia secondary to illicit drug/alcohol abuse and medication non-compliance all resolved during her hospitalization in May, 2009 (New Medical Evidence, pgs 8, 10, 11, 14, 16 and 18).

(12) The treating doctors temporarily avoided claimant's beta blockers due to her recent cocaine use (New Medical Evidence, pg 8).

(13) As of claimant's hearing date (11/19/08), the standard CHF/HBP maintenance drugs were being prescribed ([REDACTED]).

(14) Claimant's other prescription medications included inhalers ([REDACTED]) for breathing problems secondary to her asthma history (New Medical Evidence, pg 27).

(15) All other systems are negative, except as noted above (New Medical Evidence, pg 27).

### 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 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 impairments, 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 has not worked in over ten years. Consequently, this analysis must continue.

At Step 2, the law provides, that if treatment (or medication) had been prescribed which would be expected to restore an applicant's ability to work, and the 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 medication non-compliance which could have reasonably been expected to restore claimant's physical stability, in favor of her ongoing polysubstance abuse instead. As such, non-compliance provides the first basis for a disability disallowance in claimant's case.

Furthermore, claimant's records overwhelmingly support a finding her primary impairment is ongoing substance abuse, despite her protestations to the contrary at hearing. In 1997, PL 104-121 went into effect, and subsequently it was incorporated into the regulations which govern disability determinations in the State of Michigan. This law eliminates disability

benefits to those persons whose primary impairment is substance abuse/dependency when that substance abuse/dependency is a material contributing factor to the applicant's inability to engage in substantial gainful work activity. "Material to the determination" means that, if the applicant quit using drugs or alcohol, his or her remaining limitations would not be disabling.

In short, claimant's chronic and continued drug use during the relevant period at issue under her October 1, 2007 MA/SDA application (and beyond) also disqualifies her for disability-based assistance because it was a material, contributing factor to her ability to look for work and/or to remain employed. Consequently, claimant's disputed application shall 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 disabled under the governing MA/SDA rules.

Accordingly, the department's action is AFFIRMED.

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

Date Signed: July 8, 2009

Date Mailed: July 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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