

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: 2008-29283
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 1, 2008
Calhoun 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 October 1, 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 40-year-old high school graduate with an unskilled work history (security/building maintenance), but he reported at his disability hearing on October 1, 2008 he has not worked anywhere since 2004.

(2) Claimant lives alone in a third floor apartment; he is fully independent in all self cares and basic living activities.

(3) Claimant does not have a valid driver's license; consequently, he needs assistance from friends/relatives in meeting his transportation needs (e. g., shopping, doctors' appointments, etc.).

(4) Claimant was diagnosed with juvenile diabetes at age 11; he reported at hearing his blood sugar levels remained adequately controlled (100-150) as long as he adheres to his prescribed [REDACTED] dosages.

(5) Claimant has an extensive drug use/abuse history (cocaine) including drug dealing activities starting at age 16; his medical records also reveal a history of alcohol dependence (Client Exhibit A, pg 2).

(6) Claimant was hospitalized for five days in May 2007 (5/7/07-5/11/07) secondary to chest pain complaints.

(7) Standard cardiac testing (x-rays, CT scan, EEG and ECG) revealed no abnormalities, which is consistent with past testing done in 2005, and also, these test results did not verify the existence of any temporal lobe epilepsy or stroke, contrary to claimant's allegations at hearing (Department Exhibit #1, pgs 82-90).

(8) The doctors attributed claimant's chest pain to ongoing cocaine abuse and claimant was advised this drug also definitely worsens his existing mood disorder (Bipolar Mood Disorder)(Department Exhibit #1, pgs 82, 83 and 86).

(9) Claimant was not engaged in any outpatient mental health counseling as of his hearing date (10/1/08), but psychotropic medications were being prescribed for mood stabilization; additionally, claimant reported he was in full alcohol/cocaine remission since

February 2008, after attending a [REDACTED] substance abuse program (Client Exhibit D, pgs 16-19).

(10) On March 31, 2008, claimant applied for disability-based medical coverage (MA) and a monthly cash grant (SDA) claiming his 1998 Bipolar Mood Disorder diagnosis, combined with his diabetic neuropathy and asthma, cause him to be completely unable to engage in any type of substantial gainful work activity.

(11) Six months after filing this application claimant spent an overnight (9/23/08-9/24/08) in the hospital for an exacerbation of asthma symptoms which quickly stabilized with [REDACTED]; he was discharged home in stable condition and no further hospitalizations are noted (Client Exhibit G, pgs 24-26).

(12) Claimant reported at the hearing he is physically capable of walking four blocks before experiencing asthmatic symptoms and sitting at least an hour before his lower extremities start to ache.

(13) [REDACTED] and [REDACTED] have been prescribed for the pain associated with claimant's peripheral neuropathy, and also, he uses a bronchodilator ([REDACTED]) as needed for the shortness of breath symptoms associated with his asthma.

(14) On September 11, 2008, claimant went to a local emergency department; a record of that visit states in relevant part:

...He said at home his blood pressure is 140/102, here it is 199/133. The patient states he feels fine and has no symptoms. He says he has chronic pain in his bilateral arms and legs from neuropathy. He has been a diabetic since he was 11 years old and states that actually it is fairly minimal today maybe 2/10 at the most. He has been on [REDACTED] and that has been doing very well for him. The patient denies any chest pain or shortness of breath. He just recently went from [REDACTED] and he has been on [REDACTED] for quite some time (Client Exhibit F, pg 22).

(15) The emergency room doctor decided to increase claimant's [REDACTED] dosage and advised him to follow-up with his primary care doctor (Client Exhibit F, pg 23).

(16) As of claimant's hearing date, he reported his blood pressure was well-controlled with current prescription medications and dosages.

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(s), 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 stopped working in 2004; consequently, the analysis must continue. However, it must be noted claimant's exit from the competitive work force appears to be more directly related to his ongoing substance abuse (cocaine/alcohol) rather than to any severe physical or mental impairment. Therefore, the absence of claimant's recent connection to the competitive work force does not establish the onset, severity or durational factors necessary for a disability allowance.

Furthermore, at step two 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 cause, 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 historical medication noncompliance which could have reasonably be expected to restore claimant's emotional stability in favor of ongoing polysubstance abuse instead.

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 work 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 and/or alcohol, his or her remaining limitations would not be disabling. This Administrative Law Judge finds claimant’s long-term, continued abstinence from polysubstance abuse, in combination with his adherence to prescribed medication and counseling, would have significantly decreased claimant’s symptoms to the point where he would have been fully capable of maintaining simple, unskilled employment at all times relevant to his disputed application.

In fact, claimant testified he has been in sustained substance abuse remission since February 2008. With that comes the mental/emotional/cognitive stability necessary to engage in any number of unskilled jobs currently existing in the national economy. Likewise, claimant’s high blood pressure, neuropathy and asthma appear well-controlled as long as medication compliance is maintained. Finally, this Administrative Law Judge finds claimant’s reports of constant, excruciating, debilitating total body pain are completely inconsistent with the medical evidence submitted . As such, she finds they were likely fabricated for secondary gain (disability allowance), and thus, they were given very little weight or credibility.

In short, claimant’s ongoing polysubstance abuse was material to his disability because it negatively impacted his entire lifestyle and significantly undermined any return to the competitive work force during the period at issue. Consequently, claimant’s disputed

MA/retro-MA application must remained denied based on the materiality of ongoing substance abuse.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly detnied claimant's March 31, 2008 MA/retro-MA application because he did 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: October 21, 2009

Date Mailed: Ocrober 22, 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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