

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: 2008-29509

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 15, 2009

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 January 15, 2009. 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, 32-year-old nonsmoker/nondrinker with a history of Special Education which ended when he dropped out of school after completing 11th grade (Department Exhibit #1, pgs 8-10).

(2) Claimant has an unskilled work history (e.g., dishwasher [REDACTED]) (Department Exhibit #1, pg 10).

(3) Claimant hasn't been employed since he got fired from the [REDACTED] for excessive lateness, per his interview disclosure during an independent psychological evaluation conducted on February 9, 2009 (Department Exhibit #1, pgs 27-31).

(4) Claimant resides and assists his elderly mother with their general household chores (Department Exhibit #1, pgs 8, 18 and 19).

(5) Claimant never obtained a driver's license; consequently, he walks, gets rides from friends/relatives or relies on public transportation as needed (Department Exhibit #1, pgs 19 and 27).

(6) On April 14, 2008, claimant applied for a disability-based monthly cash grant (SDA) and medical coverage (MA).

(7) Claimant alleges he is completely unable to engage in any type of substantial gainful work activity based on right knee arthritis and right hand carpal tunnel pain in conjunction with cognitive, emotional and mental deficits (Department Exhibit #1, pg 8).

(8) Absolutely no objective medical evidence (e.g., x-rays, EMG, MRI) is contained within this hearing record to establish the existence of carpal tunnel syndrome or to establish the degree of severity of claimant's arthritis; however, it is noted that his doctor has prescribed [REDACTED] for pain management (Department Exhibit #1, pgs 12 and 35).

(9) Claimant stands 5'9" tall and is medically obese at 206 pounds (BMI=30.4) (Department Exhibit #1, pgs 27 and 32).

(10) Claimant also has high cholesterol sufficiently controlled with [REDACTED] which is not uncommon in overweight patients.

(11) Claimant tested adequately during an IQ assessment in February 2009, per the examining psychologist who stated as follows:

...the claimant appears to be an individual who has intellectual functioning overall solidly in the low average range, venturing into the low end of the average range. However, he “comes across” as less bright than that as referred to above, which may have contributed to [REDACTED] statement in his report of the patient having “poor cognitive skills,” which is certainly not the term I would use to describe his cognitive functioning on the basis of today’s testing.

In terms of the referral question asked to provide an opinion regarding work fitness versus maligning, I see no contraindications to the claimant being able to work successfully at jobs requiring any number of cognitive skills other than motor speed, which is certainly not a strength of his. However, his demonstrated abilities in nonverbal abstract thinking would suggest he is able to “figure out” a situation involving practical hands-on knowledge rather than verbally mediated skills. Nevertheless, he also has strengths in many verbal areas, with good social judgment and awareness of societal norms, vocabulary skills, and the capacity to concentrate and pay attention all in the low average to average range. Thus, once again he certainly should be able to work successfully at a number of types of jobs in light of his cognitive abilities (Department Exhibit #1, pgs 30 and 31).

(12) Claimant was diagnosed with Depression NOS and a Dependent Personality Disorder; his Global Assessment Function (GAF) was 55 (Department Exhibit #1, pg 31).

(13) Claimant says he attempted “suicide” in the past by hitting himself in the head with a frying pan and beating himself up, but these actions did not result in psychiatric hospitalizations, nor has been claimant been otherwise hospitalized.

(14) Claimant initiated outpatient [REDACTED] treatment approximately two years ago to deal with his depression and thoughts of suicide and he has remained involved since then.

(15) Claimant attends [REDACTED] counseling sessions one or two times monthly (as needed) and the staff psychiatrist most recently prescribed [REDACTED] (an antidepressant) and “something for anxiety,” per claimant’s February 2009 recollection (Department Exhibit #1, pg 28).

(16) On May 13, 2009, the department’s State Hearing Review Team (SHRT) issued their decision after a post hearing review of claimant’s file which states in relevant part:

There is no indication of a physical condition that would pose significant limitations. His mental condition would make skilled work difficult, however, he should be capable of performing simple, unskilled work. Medical opinion was considered in light of CFR 416.927. The evidence in file does not demonstrate any other impairments that would pose a significant limitation.

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 duration requirement is 90 days. This means the individual's impairment(s) must meet the Social Security Administration (SSA) disability standards for 90 days in order for that individual 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).

...[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.

...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).

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).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

...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).

[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 benefits he seeks because he has not established the existence of a medically severe condition, or combination of conditions, which could reasonably be expected to prevent employability for the necessary, continuous durations required under the governing regulations. Unfortunately, nothing in claimant's medical records establishes he is incapable of working in a wide variety of unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. As such, claimant's disputed 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 April 14, 2008 MA/SDA application.

Accordingly, the department's action is AFFIRMED.

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

Date Signed: January 11, 2010

Date Mailed: January 11, 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

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