

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: 2008-6719
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 16, 2008
Shiawassee 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 July 16, 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, 54-year-old male with a general equivalency diploma (GED) who was diagnosed with Stephen Johnson Syndrome (SJS) in 1992 while hospitalized with a severe dermatological outbreak commonly associated with that disease (Department Exhibit #1, pgs 139-140 and 151-153).

(2) Claimant resides with his elderly mother and stepfather; although he has a remote history of alcoholism he has not had a drink since 1994, per self report.

(3) Claimant has a sporadic, unskilled work history primarily in temporary service jobs but he has been unemployed since 2004 when he left his most recent position in a styrofoam factory after approximately one year.

(4) Claimant has some hearing loss secondary to childhood ear infections and recent left ear surgeries.

(5) Additionally, claimant still experiences occasional skin outbreaks secondary to SJS.

(6) Claimant stands approximately 5'7" tall and weighs approximately 190 pounds.

(7) In 1990, claimant received a disability disallowance from the Social Security Administration (SSA) based on their finding that his SJS combined with his hearing loss did not constitute a legal disability; no evidence of an appeal or a more recent SSA application filing exists within the hearing records submitted to date (Department Exhibit #1, pgs 92-103).

(8) Claimant has a valid driver's license and is independent in all activities of daily living.

(9) On February 26, 2007, claimant applied for disability-based MA/SDA at the Department of Human Services Office alleging impairments identical to those alleged at the SSA.

(10) In July 2008, claimant was diagnosed with Irritable Bowel Syndrome (IBS), currently under adequate control with Asacol 400 mg QID, per an independent consultative physical evaluation conducted on September 4, 2008.

(11) This examination reveals 20/30 right eye vision and 20/25 left eye vision with corrective lenses.

(12) In May 2008, claimant underwent bilateral temporal bone CT scans (Client Exhibit A, pg 2).

(13) Claimant's right ear CT scan showed no severe abnormalities but evidence of bone dehiscence in the lateral aspect of the floor of claimant's middle cranial fossa was detected (Client Exhibit A, pg 2).

(14) In July 2008, claimant underwent two surgeries for left ear cholesteatoma removal and a mastoidectomy followed by skin grafting on the mastoid area; this surgery improved claimant's reported dizzy symptoms but worsened his bilateral hearing ability, according to the September 4, 2008 independent physical consultative examination; hearing aides are not noted (See Finding of Fact #4 above).

(15) Claimant has no history of psychiatric hospitalizations or mental health treatment/counseling but his primary care physician has prescribed [REDACTED] for self-reported anxiety.

(16) Claimant states he needs two or three teeth pulled and he feels he needs updated glasses but he has no insurance to cover these procedures (Department Exhibit #1, pg 5 and 6).

(17) No neurological, orthopedic, or gait abnormalities were detected during the September 2008 independent consultative physical evaluation and claimant demonstrated the physical capacity to walk to his June 16, 2008 MA/SDA hearing, which he reported to be approximately three and a half miles.

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 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 coverage 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 above-stated rules. Claimant's mental status and vision are within normal limits. Likewise, while claimant's SJS and IBS may be subject to occasional flare-ups, they could not reasonably be expected to prevent gainful activity on a sustained basis. Despite claimant's moderate hearing loss, he otherwise appears perfectly capable 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 in concurrence with the department's post-hearing State Hearing Review Team (SHRT) decision dated October 12, 2008.

Lastly, this Administrative Law Judge notes claimant has presented no evidence of a Social Security Administration disability allowance or a pending appeal at that level. The department's policy and corresponding law in this area are clear.

Final SSI Disability Determination

SSA's determination that disability or blindness does **not** exist for SSI purposes is **final** for MA if:

- . The determination was made after 1/1/90, **and**
- . No further appeals may be made at SSA, **or**
- . The client failed to file an appeal at any step within SSA's 60-day limit, **and**
- . The client is **not** claiming:
 - .. A totally different disabling condition than the condition SSA based its determination on, **or**
 - .. An additional impairment(s) or change or deterioration in his condition that SSA has **not** made a determination on.

Eligibility for MA based on disability or blindness does **not** exist once SSA's determination is **final**. PEM, Item 260, pp. 2-3.

This policy is also applied in SDA cases, because the MA, SDA and Social Security disability definitions are identical, except for a shorter durational period for SDA (90 days).

The relevant federal regulations are found at 42 CFR Part 435. These regulations provide: "An SSA disability determination is binding on an agency until that determination is changed by the SSA." 42 CFR 435.541(a)(2)(b)(i). This regulation also provides: "If the SSA determination is changed, the new determination is also binding on the department." 42 CFR

435.541(a)(2)(b)(ii). These federal mandates are also reflected in the policy items cited above (PEM Item 260).

Claimant is now alleging impairments identical to those the Social Security Administration (SSA) has already reviewed. Consequently, from the evidence existing on this record, it appears the department's action could have been properly upheld at the threshold level, even if a substantive decision had not been made.

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/SDA eligibility standards.

Accordingly, the department's action is AFFIRMED.

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

Date Signed: August 26, 2009

Date Mailed: August 27, 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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