

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: 2008-8886
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED] 2
Hearing Date:
April 23, 2008
Ionia 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 April 23, 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 divorced, 43-year-old, pack per day smoker with a GED who was living in a homeless shelter when his October 15, 2007 disability application denial hearing was held on [REDACTED].

(2) Claimant has filed four previous DHS disability applications and one [REDACTED] [REDACTED] disability application, all of which have been denied; he has a [REDACTED] disability denial hearing pending.

(3) Claimant has an extensive prison record with his most recent outdate being [REDACTED], per his testimony at hearing.

(4) That same month, specifically, on [REDACTED], claimant filed his fifth MA/SDA application.

(5) Claimant has a sporadic, unskilled work history (construction/manual labor/surveyor's assistant), but he has not been employed anywhere since [REDACTED] when he worked part-time as a child care provider.

(6) Claimant has an alcohol dependence diagnosis with repeated relapses.

(7) Claimant was last admitted to [REDACTED] on [REDACTED] he drank several beers the night before, per self admission (Client Exhibit A, pgs 1-6).

(8) Three days before claimant filed his disputed disability application he was treated for low back pain in a local emergency room (Department Exhibit #1, pgs 23-27).

(9) Claimant admitted being intoxicated the night before admission (Department Exhibit #1, pg 23).

(10) Spinal x-rays taken at that time were unremarkable, showing only degenerative arthritis at L5-S1 with no evidence of any fractures and a normal congenital variant at S5 of the sacrum (Department Exhibit #1, pg 23).

(11) Additionally, claimant's chest x-rays and a head CT scan done at that time also were normal (Department Exhibit #1, pgs 25-27).

(12) Claimant's [REDACTED] lumbar spine MRI scan evidences mild degenerative disc disease and a mild, diffuse annular bulge at L4-5, with a small right paracentral disc herniation at L5-S1; mild bilateral neuroforaminal stenosis without evidence of central canal stenosis also was noted (Department Exhibit #1, pg 134).

(13) An intake psychological evaluation done by the [REDACTED] [REDACTED] notes Alcohol Dependence and Antisocial Personality Disorder as claimant's primary mental impairments (Department Exhibit #1, pg 4).

(14) Claimant's Global Assessment Function (GAF) at that time was 65 (normal), and the report concludes:

...It is recommended [claimant] participate in substance abuse treatment for an indefinite period of time. It would be progressive for him to obtain a work detail or job skills training, which may help him become more mature, responsible and productive. When he is returned to the community, it would be appropriate for him to engage in individual and/or group psychotherapy to address his relationship problems...(Department Exhibit #1, pg 4).

(15) In [REDACTED] approximately one week before claimant's MA/SDA hearing date, he reinitiated outpatient mental health counseling for alcoholism and depression (Client Exhibit A, pgs 3-6).

(16) Additionally, V [REDACTED] have been prescribed for management of claimant's reported low back pain (Client Exhibit A, pg 1).

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 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.

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.

...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).

...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).

...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).

The evidence presented establishes no severe mental impairments existing in claimant's case. In fact, the record overwhelmingly supports a finding claimant's primary impairment during the disputed period was ongoing alcohol abuse.

In 1997, PL 104-121 went into effect, eliminating eligibility for monthly disability benefits to those persons whose primary impairment is substance abuse/dependency when that substance abuse/dependency is a material contributing factor to the individual's ability to engage in substantial gainful work activity. "Material to the determination" means that, if the individual stopped using drugs or alcohol, his remaining limitations would not be disabling.

The evidence presented establishes no severe mental impairments existing in claimant's case. Additionally, his depressive symptoms quite certainly are exacerbated by continued alcohol abuse. Absent claimant's depression, his sole remaining reported limitation is constant, excruciating, debilitating lower back pain. Unfortunately for claimant, the objective medical evidence on this record does not support an impairment, or combination of impairments, which could reasonably be expected to produce the severity, intensity or duration of pain he reports.

It must be noted the law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered.

Claimant's current prescription medications appear adequate for pain management, given his diagnosed conditions. In fact, on reflection of all factors combined, this Administrative Law Judge concludes claimant's pain complaints are being used as symptom magnification for secondary gain (a disability allowance).

In short, claimant's alcohol abuse disqualifies him from receipt of disability-based assistance during the disputed period because it was a material, contributing factor to his ability to look for work and/or remain employed. Claimant's only remaining, documented health conditions would not have prevented him from performing any number of sedentary or light work jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. (See "light" and "sedentary" exertional levels definition at 20 CFR 416.967 [a] and [b]. As such, claimant's disputed application shall remain denied in concurrence with the department's State Hearing Review Team (SHRT) decisions, dated February 22, 2008 and May 5, 2008.

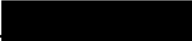
DECISION AND ORDER

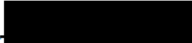
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly determined claimant is not disabled by MA/SDA eligibility standards.

Accordingly, the department's action is AFFIRMED.

/s/

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

Date Signed:  _____

Date Mailed:  _____

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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