

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: 2008-10367
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 24, 2008
Genesee 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 April 24, 2008. Claimant personally appeared and testified. He was assisted by

[REDACTED]

ISSUE

Did the department properly deny claimant's February 28, 2007 Medicaid (MA), retro-MA and State Disability Assistance (SDA) application based on a finding he lacks a legally disabling condition?

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, 23-year-old male with an extensive history of Special Education during his formative years.

(2) An interdisciplinary evaluation done at age eight notes claimant was reading at a second grade level and states in relevant part:

Poor penmanship, has poor organizational skills. Needs teacher direction to begin and finish assignments. Has low reading level and this hinders progress in other areas (Client Exhibit B, pg 13).

(3) Claimant completed ninth grade in Special Education then dropped out of school without ever learning to read or write.

(4) Claimant has a sporadic work history in unskilled manual labor jobs, but he has never held any of these temporary positions longer than two months because the employers kept laying him off due to his inability to concentrate, follow through or complete simple assigned tasks (Department Exhibit #1, pg 16).

(5) Claimant has never lived independently for any appreciable period and he was still living with the grandmother who raised him as of his April 24, 2008 hearing date.

(6) Claimant's hospital records verify multiple admissions since 2006 for symptoms frequently associated with rhabdomyolysis (breakdown of skeletal muscle fibers with leakage of muscle contents into the circulation), but a 2007 assessment notes his urine myoglobin test was negative so rhabdomyolysis was ruled out (Client Exhibit A, pgs 2 and 30).

(7) In May, 2007, claimant was diagnosed with an undifferentiated connective tissue disorder while hospitalized, based on review of his November, 2006 pericardial tissue biopsy which showed patchy fibrin deposition, granulation tissue formation and chronic inflammation (Client Exhibit A, pg 13).

(8) Claimant's May 13, 2007 chest x-rays verified patchy atelectasis or infiltrates had formed in claimant's left, mid/lower lung zone which were not present in an earlier study done on March 18, 2007 (Client Exhibit A, pg 25).

(9) Claimant does not use any assistive devices, but his gait is halting and slow; his hospital discharge instructions from May, 2007 indicate he should engage in activity only “as tolerated” (Client Exhibit A, pg 31).

(10) Claimant reports intractable pain in all joints/muscles, ribs, lungs, stomach and head; the over-the-counter pain medications he uses are not effective in pain control.

(11) Claimant stands 5’9” tall and weighs 140 pounds; he reported at hearing this was approximately a 50 pound weight loss since his symptoms began in November, 2006.

(12) Claimant reports he needs assistance with basic living activities like bathing, dressing, eating and he says he sleeps at least four hours daily in brief nap sessions due to unremitting pain.

(13) On August 2, 2007, claimant underwent an independent psychological evaluation.

(14) The examining psychologist suspected claimant may be minimizing his substance abuse history but otherwise he was a fairly accurate historian (Department Exhibit #1, pgs 16 and 17).

(15) Claimant was diagnosed with Reactive Depression based on his appetite changes (weight loss), difficulty sleeping, excessive fatigue, withdrawal/social isolation, feelings of hopelessness/helplessness, overriding anxiety and chronic pain (Department Exhibit #1, pg 18).

(16) The psychologist opined psychotropic medications combined with outpatient psychiatric counseling to reduce claimant’s psychiatric symptoms, stabilize his daily functioning and address his possible ongoing substance abuse issues (pain medication) would be necessary to achieve success in any long-term vocational rehabilitation endeavors (Department Exhibit #1, pg 18).

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 disability, the federal regulations require several factors to be considered, including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitations in light of the objective medical evidence presented. 20 CFR 416.929(c)(94).

The pertinent regulations in claimant's case state:

...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 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.

Psychiatric signs are medically demonstrable phenomena that indicate specific psychological abnormalities, e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception, as described by an appropriate medical source. 20 CFR, Part 404, Subpart P, App. 1, 12.00(B).

Symptoms and signs generally cluster together to constitute recognizable mental disorders described in the listings. The symptoms and signs may be intermittent or continuous depending on the nature of the disorder. 20 CFR, Part 404, Subpart P, App. 1, 12.00(B).

We measure severity according to the functional limitations imposed by your medically determinable mental impairment(s). We assess functional limitations using the four criteria in paragraph B of the listings: activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation. 20 CFR, Part 404, Subpart P, App. 1, 12.00(B).

...Where "marked" is used as a standard for measuring the degree of limitation it means more than moderate, but less than extreme. A marked limitation may arise when several activities or functions are impaired or even when only one is impaired, so long as the degree of limitation is such as to seriously interfere with the ability to function independently, appropriately and effectively, and on a sustained basis. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

We do not define "marked" by a specific number of activities of daily living in which functioning is impaired, but by the nature and overall degree of interference with function. For example, if you do a wide range of activities of daily living, we may still find that

you have a marked limitation in your daily activities if you have serious difficulty performing them without direct supervision, or in a suitable manner, or on a consistent, useful, routine basis, or without undue interruptions or distractions. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

We do not define “marked” by a specific number of different behaviors in which social functioning is impaired, but by the nature and overall degree of interference with function. For example, if you are highly antagonistic, uncooperative or hostile but are tolerated by local storekeepers, we may nevertheless find that you have a marked limitation in social functioning because that behavior is not acceptable in other social contexts. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

...The context of the individual's overall situation, the quality of these activities is judged by their independence, appropriateness, effectiveness, and sustainability. It is necessary to define the extent to which the individual is capable of initiating and participating in activities independent of supervision or direction. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

...Social functioning refers to an individual's capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. You may demonstrate impaired social functioning by, for example, a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving coworkers. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

...Concentration, persistence or pace refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly

found in work settings. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Wherever possible, however, a mental status examination or psychological test data should be supplemented by other available evidence. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

The evaluation of disability on the basis of a mental disorder requires sufficient evidence to: (1) establish the presence of a medically determinable mental impairment(s); (2) assess the degree of functional limitation the impairment(s) imposes; and (3) project the probable duration of the impairment(s). Medical evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent determination. In addition, we will consider information from other sources when we determine how the established impairment(s) affects your ability to function. We will consider all relevant evidence in your case record. 20 CFR 404, Subpart P, App. 1, 12.00(D).

Claimant's medical records verify severe cognitive and emotional impairments in his developmental years before age 18. In fact, claimant has never functioned adequately in the competitive work force. Additionally, his current constellation of psychiatric symptoms meets Listing 12.04 (A) and (B), even without consideration of the undifferentiated connective tissue disease diagnosis he received in May, 2007. As such, the department's decision to the contrary cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining claimant is not disabled under the governing regulations.

Accordingly, the department's denial of claimant's February 28, 2007 MA/retro-MA/SDA applicaton is REVERSED and it is Ordered that:

(1) The department shall process claimant's disputed application and award him all the benefits he is entitled to receive thereunder.

(2) The department shall schedule claimant for independent mental and physical consultative examinations at review in June, 2010.

(3) Claimant should be aware that his failure to participate in the recommended mental health treatment/counseling could result in denial of benefit continuation at review.

(4) The department shall appoint a Protective Payee to manage claimant's monthly cash grant (SDA), as recommended by the examining psychologist in August, 2007 (See Finding of Fact #13, #14 and #16 above).

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

Date Signed: June 23, 2009

Date Mailed: June 24, 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.

2008-10367/mbm

MBM/db

cc:

