

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: 2008-13016

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 15, 2008

Muskegon 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 May 15, 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, approximately pack per day smoker without a valid driver's license for at least ten years secondary to outstanding unpaid tickets; he lives alone in an apartment in [REDACTED], and he is independent in all self cares and basic living activities.

(2) Claimant rides his bicycle to resolve his necessary personal transportation needs; he spends most of his time watching television and shooting pool (See Independent Psychological Examination, pg 3).

(3) Claimant is a non-insulin dependent diabetic who takes oral blood sugar control medication (Glyburide), not uncommon in patients like him who are medically obese at 5'8" tall and 205 pounds (BMI=31.2).

(4) Claimant has a limited education (completed 9th grade) and a felony record; he was most recently incarcerated from February, 2005 until March 7, 2006; upon release, claimant's former parole officer mandated outpatient substance abuse treatment/counseling for ongoing alcohol and multi-drug history of abuse including cocaine/marijuana.

(5) A physical examination report from one of claimant's treating facilities ([REDACTED]) dated October 4, 2007 notes claimant reported he was still drinking daily (4-5/24 oz bottles per day)(Department Exhibit #1, pg 69).

(6) Claimant was not in any mental health treatment or counseling as of his application filing date (10/07) and no psychotropic medications are currently being prescribed.

(7) Claimant reported he went to counseling briefly in 2007 but quit when he felt better.

(8) An October, 2008 medical clinic note indicates claimant has benign essential hypertension; he takes two blood pressure medications and a water pill daily for blood pressure management (Department Exhibit #1, pgs 71 and 100).

(9) Claimant alleges he is disabled due to chronic lower back and left knee pain.

(10) Left knee x-rays dated October 30, 2007 reveal some degenerative changes (osteoarthritis) but claimant's lumbar spine x-rays are normal (Department Exhibit #1, pgs 74-77).

(11) [REDACTED] has been prescribed for claimant's self-reported pain symptoms; he stated he takes two daily, one in the morning and one in the evening.

(12) During 2003, claimant underwent several objective medical tests in response to various symptoms he reported across multiple body systems.

(13) Claimant's 2003 echocardiogram and Doppler tests were normal, as were the kidney ultrasound and CT brain scan (Department Exhibit #1, pgs 10, 15 and 17).

(14) Claimant has not been substantially gainfully employed since between 1992 and 1998 when he worked as a cashier/stocker in a convenience store; he left that job in 1998 because it was sold to a new owner.

(15) Claimant attended an independent psychological evaluation on May 20, 2008 (See also Finding of Fact #2 above).

(16) At that time, claimant demonstrated full orientation, alertness and spontaneity; his speech was clear, coherent and fluent; his thoughts were relevant, logical, connected and concrete (See Independent Psychological Examination, pg 3).

(17) Claimant demonstrated mostly insignificant difficulties in the four mental areas required to be assessed in disability determination cases, with some moderate difficulties noted in remembering/carrying out detailed instructions and maintaining extended periods of attention/concentration (See Independent Psychological Evaluation, pgs 6 and 7).

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).

Statutory authority for the SDA program states in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Michigan administers the federal MA program. In assessing eligibility, Michigan defers to the federal guidelines. These guidelines also are applied in SDA cases. They state in relevant part:

"Disability" is:

...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.

...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).

...[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.

...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).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can

still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

At application, the claimant has the burden of proof pursuant to the following section:

...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 federal regulations are very specific regarding the type of medical evidence required from claimant to establish disability. The regulations essentially require laboratory or clinical medical reports consistent with claimant's reported symptoms, or with his/her treating doctors statements regarding disability or the lack thereof. These regulations state in part:

...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).

...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).

...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).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(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).

Applying the sequential analysis herein, claimant remains eligible at the first step since he is not currently working, and has not been substantially gainfully employed since 1998.

20 CFR 416.920(b). The analysis continues.

The second step of the analysis assesses the severity of all documented impairments. 20 CFR 416.920(c). This step is a *de minimus* standard. Ruling any ambiguities in claimant's favor, this Administrative Law Judge finds severity is met. The analysis continues.

The third step of the analysis looks at whether an individual meets or equals one of the listed impairments. 20 CFR 416.920(d). Claimant does not. The analysis continues.

The fourth step of the analysis looks at the ability of the applicant to return to his or her past relevant work. Since claimant has no past relevant work history this analysis must continue. 20 CFR 416.920(e).

The fifth and final step of the analysis applies the biographical data of each applicant to the Medical-Vocational Grid Rules to determine the functional capacity of the applicant to do other work. 20 CFR 416.920(f). After a careful review of the credible medical evidence presented, this Administrative Law Judge finds Medical-Vocational Rule 202.10 directs a finding of not disabled.

In reaching this conclusion, this Administrative Law Judge considered claimant's age, education, work history and documented physical/mental impairments. She finds insufficient medical documentation to indicate these conditions, standing alone or combined, would interfere with claimant's ability to engage in any number of light unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases.

Furthermore, everything on this record suggests claimant's mental and physical health will remain stable as long as he stays drug and alcohol free and maintains medication compliance

with his current prescription schedule. As such, claimant's disputed application must remain denied in concurrence with the department's State Hearing Review Team (SHRT) decisions dated January 15, 2007 and December 17, 2008.

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 October, 2007 MA/SDA application based on a finding he does not meet the rules necessary to qualify for either program.

Accordingly, the department's action is AFFIRMED.

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

Date Signed: July 16, 2009

Date Mailed: July 17, 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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