

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: 2008-13809
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 29, 2008
St. Clair 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 May 29, 2008. Claimant personally appeared and testified with assistance from his mother and [REDACTED].

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA) 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, 41-year-old male with an alcohol abuse history who underwent inpatient substance abuse treatment at [REDACTED] in March, 2005 (Client Exhibit A, pgs 1 and 2).

(2) Claimant's educational history is positive for Special Education services throughout, as he was termed Educable Mentally Impaired (EMI) and Learning Disabled (LD) based on his repeatedly low childhood IQ test scores (Client Exhibit A, pgs 3-5).

(3) Claimant underwent IQ re-testing on May 22, 2008 (at age 40) in conjunction with his appeal of the department's denial of his December 17, 2007 MA application; malingering was ruled out and all test results were deemed valid (Client Exhibit A, pg 5).

(4) Claimant's WAIS-III scores were as follows: Verbal IQ=30; Performance IQ=25; Full Scale IQ=56 (Client Exhibit A, pg 6).

(5) The IQ examiner summarized as follows:

Based on the above results as well as a review of psychological evaluations conducted over a 10 year period from ages 4 to 14 yrs old, [claimant] meets the criteria for a diagnosis of Mild Mental Retardation as his Full Scale IQ is significantly subaverage and he has concurrent deficits in adaptive functioning including communication, self-care, home living, social/interpersonal skills, self-direction, functional academic skills, work, leisure, use of community resources, health and safety with onset before the age of eighteen. He likely experiences feelings of depression as he recognizes most adults his age care for themselves or even provide some care to others. As he is very concrete in his thinking and desires to belong or fit in, [claimant] is at risk to be exploited by more sophisticated individuals. He will likely continue to benefit from coordination of supports (Client Exhibit A, pg 6).

(6) Claimant was participating with [REDACTED] as of his May 29, 2008 disability hearing date.

(7) [REDACTED] has claimant involved with [REDACTED] but this work does not rise to the level necessary to be deemed substantial gainful employment under the governing regulations.

(8) Claimant's other professional support partner includes [REDACTED] [REDACTED] for ongoing depression since March, 2008.

(9) As of claimant's May 29, 2008 disability hearing date, [REDACTED] had increased his [REDACTED] daily.

(10) Claimant lives independently in a house across the street from his mother, but she provides extensive daily support with basic living activities and personal grooming reminders on a daily basis.

(11) Claimant has no hobbies, few friends and no outside club/group memberships; essentially, he isolates at his home or his mother's home and keeps company with their shared cat.

(12) Claimant's December 7, 2007 full scale psychiatric evaluation states in relevant part:

[Claimant] does, however, have significant problems. He is unable to read and write. His math is very poor. He has had a very hard time getting jobs. Most of his jobs have been through family friends and usually only last for a few weeks to a few months at the most. He last worked earlier this year when he had a driving job for a few months. He can't explain how he lost that job but usually the mother reports that he loses jobs because he can't do the work or he has difficulties with other workers. He is often teased by other people because of his intellectual deficits. He does have problems with chronic depression. The mother says he gets depressed because he doesn't have a job and has no money and is being teased by other people. The mother said that he is also easily exploited and if he has a place to live people tend to move in with him and take advantage of him. Currently he lives next door to his mother who actually owns the house that he lives in. She says that this way she can keep an eye of him but he still has some privacy...(Department Exhibit #1, pg 52).

(13) This psychiatrist concludes:

...I would suggest that we identify [claimant] as primarily a developmentally disabled consumer. From the point I think we should pursue what kinds of support services we can help with. [Claimant] will need case management including support to help him get Social Security which I believe he qualifies for and help in managing his life better. He is currently trying to get help with

getting a job through [REDACTED] and there may be other supports that we can offer that will give him activities and help him find gainful employment in an appropriate work setting...(Department Exhibit #1, pg 50).

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 applicable federal regulations state:

"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.

...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).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).

5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not employed; consequently, an analysis of Step 2 is required.

At Step 2, claimant's mental/emotional/cognitive impairments meet the level of severity and duration required for further inquiry into his legal disability status.

Step 3 requires an applicant's physical and/or mental impairments be viewed in light of the listed impairments. These listings contain over 100 mental and physical impairments which are deemed to automatically prevent an individual from engaging in gainful work activity (See 20 CFR Pt 404, App 1, Part A).

The psychiatric, psychological and psychosocial evidence on this record establishes claimant meets Listing 12.05(B) as his most recent IQ score is less than the listed level (See Finding of Fact #4 above). As such, the department's disability disallowance is erroneous and it simply 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 December 17, 2007 MA application 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) Claimant's condition shall be reviewed in December, 2012, unless he receives a Social Security disability allowance by that time.

(3) At review, the department shall obtain all current treatment notes, progress reports, etc. from claimant's treating physicians, mental health specialists and outside supportive organizations (i. e., [REDACTED] etc.).

(4) At review the department shall schedule an independent consultative psychiatric examination with IQ testing.

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

Date Signed: July 23, 2009

Date Mailed: July 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.

MBM/db

cc:

[REDACTED]