

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: 2008-14583
Issue No: 2009/4031
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 did not appear; however, oral argument was made on his behalf by [REDACTED], a patient advocate from [REDACTED].

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) On April 10, 2006, claimant filed an MA/SDA application, which the department denied; no appeal was taken (Department Exhibit #1, pg 54).

(2) On August 29, 2007, claimant's authorized representative reapplied; when that application was denied, claimant's authorized representative appealed.

(3) Claimant's hearing was held on May 29, 2008.

(4) Claimant did not appear at the hearing; consequently, no testimony about the onset, duration or severity of his symptoms was presented.

(5) Claimant's medical packet (Department Exhibit #1, pgs 1-299) dates to 2006 and reveals intermittent hospitalizations for small bowel obstructions secondary to Crohn's Disease (first diagnosed in 2000 per hospital records dated March 21, 2006)(Department Exhibit #1, pgs 3 and 30).

(6) At that time, claimant worked as a machinist but he was laid-off; he reported no other work history, however, claimant's August, 2007 hospital records indicate he was again employed as a machinist in June or July, 2007 (Department Exhibit #1, pgs 30, 276 and 291).

(7) Claimant is a divorced, pack per day smoker with a 12th grade education who was living with his parents at reapplication; he has a polysubstance abuse history (alcohol/marijuana) (Department Exhibit #1, pgs 47, 292 and 293).

(8) Seven months before claimant's authorized representative reapplied for MA/SDA, claimant was hospitalized briefly for right upper extremity cellulitis (Department Exhibit #1, pgs 113-118).

(9) Claimant's drug and urine screens were positive for cocaine, opiates and benzodiazepines at that time; additionally, claimant admitted drinking three nights per week and using marijuana/cocaine (Department Exhibit #1, pg 115).

(10) Claimant said he had a past history of intermittent treatment for his Crohn's Disease, but no past surgeries (Department Exhibit #1, pg 114).

(11) Claimant's diagnoses were: (1) profound iron deficiency (anemia); (2) history of noncompliant Crohn's Disease; and (3) ethanol abuse (Department Exhibit #1, pg 116).

(12) In August, 2007, claimant spent another five days in [REDACTED] to stabilize his anemia, improve his hypercoagulability and treat bilateral plural effusions (suspected pneumonia)(Department Exhibit #1, pgs 161 and 286-288).

(13) On August 9, 2007, claimant was ambulating in his hospital room with no further respiratory complaints; from a pulmonary perspective he was ready for discharge whenever Medicine would agree, per claimant's treating pulmonologist (Department Exhibit #1, pg 161).

(14) Despite the presence of bilateral partial renal vein thrombus (which was resolved by interior vena cava filter), claimant's objective tests verified normal renal function and good urine output (Department Exhibit #1, pgs 268 and 288).

(15) In March, 2006, claimant weighed 145 pounds; by September, 2007 his weight increased to 152 pounds (Client Exhibit A)(See also Finding of Fact #5 above).

(16) In September, 2007, claimant was treated with heparin at [REDACTED] for right popliteal thrombosis (9/27/07-10/2/07)(Client Exhibit A, pgs 1-6).

(17) As of claimant's May 29, 2008 hearing date, claimant's authorized representative reported claimant's medication included [REDACTED] and an aspirin daily, as well as [REDACTED] and an iron supplement for his chronic anemia.

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).

...[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).

...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).

...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

[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).

...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).

... [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).

...Evidence that you submit or that we obtain may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...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) [SDA Duration = 90 days].

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, the competent, credible medical evidence reveals claimant was employed as a machinist in June or July, 2007, despite the fact that he provided an earlier job stop date during application filing (See Finding of Fact #6 above). Nevertheless, claimant's documented polysubstance abuse and absence from the hearing lead this Administrative Law Judge to

conclude he is more likely than not to have remained unemployed after his August, 2007 hospitalization. Consequently, the required analysis will continue.

At Step 2, 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 physical and/or mental 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 medication schedule appears adequate for symptom management, as long as compliance is maintained (See Finding of Fact #10, #11 and #17 above).

Therefore, at Step 2, claimant does not qualify for the MA/SDA coverage sought under his August 29, 2007 application because he did not appear at the hearing to testify about the severity or duration of his alleged symptoms, or about his compliance with his medication schedule (or lack thereof), or about his employment record inconsistencies. Furthermore, claimant's authorized representative failed to establish the existence of any severe impairment, or combination of impairments, that would preclude claimant from engaging in gainful employment for the required, continuous durational periods set forth above. In short, this record simply is insufficient to establish claimant was physically or mentally incapable of working in a wide variety of unskilled jobs existing in the national economy during the disputed period, but for his ongoing substance abuse, which is not disabling under the current regulations. As such, claimant's disputed application must remain denied for lack of duration/severity shown.

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 August 29, 2007 MA/SDA application.

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.

MBM/db

cc:

[REDACTED]