

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: 2008-7749  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
March 13, 2008  
Montcalm 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 March 13, 2008. Claimant personally appeared and testified.

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 divorced, 38-year-old pack per day smoker with insulin dependent diabetes and a Special Education history who completed ninth grade; he resides with his friends and/or relatives (Department Exhibit #1, pgs 14 and 50).

(2) Claimant has a sporadic, remote unskilled work history in temporary service positions; as of September, 2007, he was a home help aide being paid by the department to shop, clean, etc. for a disabled individual (Department Exhibit #1, pgs 9 and 14).

(3) On August 1, 2007, claimant applied for disability-based MA/SDA.

(4) Claimant also previously applied for Social Security disability benefits alleging the same impairments he alleged in his MA/SDA action; the Social Security application was denied and no appeal was taken (Department Exhibit #1, pg 14).

(5) Claimant reports chronic, debilitating pain in his left shoulder secondary to a February 14, 2007 snowmobile accident where he fell off his snowmobile while going a moderate speed (Department Exhibit #1, pg 50).

(6) In April, 2007, claimant was treated for an accidental, self-inflicted left leg laceration, claiming he was "accident prone" (Department Exhibit #1, pg 48).

(7) In May, 2007, claimant was seen in the local emergency room complaining of extreme pain in his left hand secondary to a two week old laceration on his left hand caused by shutting it in a car door (Department Exhibit #1, pg 46).

(8) The medical record reveals claimant did sustain a small left hand contusion without fracture and his laceration was well healed; claimant's sutures were removed without complication and he was prescribed six Vicodin tablets because he stated his pain was very severe (Department Exhibit #1, pg 47).

(9) On May 15, 2007, claimant went to the emergency room complaining of chronic dental pain and a migraine headache (Department Exhibit #1, pg 43).

(10) The treating physician noted claimant had a very bizarre affect and was fixated in receiving narcotics (Department Exhibit #1, pg 44).

(11) Upon review of claimant's medical record, this physician dictated claimant's prescription use history as follows:

On April 4, 2007, [claimant] received 20 Extra Strength [redacted] tablets from [redacted] resident physician. On February 26, 2007, 30 Extra Strength [redacted] tablets by the same resident physician at [redacted]. On February 24, 2007, 12 Extra Strength [redacted] tablets by [redacted] from [redacted] of [redacted]. On February 19, 2007, 10 [redacted] tablets by the same resident physician at [redacted]. On January 22, 2007, 15 [redacted] tablets from [redacted] campus [redacted] t. On January 16, 2007, 24 [redacted] tablets from [redacted] from [redacted]. On January 13, 2007, 20 [redacted] tablets by one [redacted] at [redacted]. On December 22, 2006, 40 [redacted] tablets by [redacted] at [redacted]. On December 19, 2006, 30 Extra Strength [redacted] tablets by unknown physician. On December 15, 2006, 30 [redacted] tablets by [redacted] at [redacted]. On December 15, 2006, 24 [redacted] n tablets by [redacted] in [redacted]. On December 5, 2006, 30 Extra Strength [redacted] tablets from [redacted]. On December 2, 2006, 20 Extra Strength [redacted] tablets by [redacted]. On October 18, 2006, [redacted] Elixir 4 ounces from [redacted] l.

At this time, it is clear this patient is receiving multiple narcotic prescriptions from various physicians including e [redacted] [redacted] at [redacted]. The patient was informed that it is important that he receive his narcotics from one physician based on his previous records that date back many years...(Department Exhibit #1, pg 44).

(12) In June, 2007, claimant was treated for reported clavicle pain related to a two week old left distal clavicle fracture he got during an altercation with his brother and stepfather (Department Exhibit #1, pg 3).

(13) Claimant's x-rays were reviewed which showed a small fracture, well lined-up with the acromion that was healing nicely (Department Exhibit #1, pg 3).

(14) Updated left shoulder x-rays taken on February 9, 2008 show this fracture had healed completely; degenerative post-traumatic or inflammatory changes were speculated as possible sources for claimant's reportedly insufferable pain (Client Exhibit A, pg 9).

(15) Chest x-rays taken that same day due to claimant's reported chest pain were normal, with no evidence of acute pulmonary disease (Client Exhibit A, pg 8).

(16) After the department's State Hearing Review Team (SHRT) reviewed claimant's post-hearing submission (Client Exhibit A, pgs 1-42), they continued the denial based on lack of severity and the materiality of substance abuse; this decision is dated June 24, 2008.

### 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).

Jurisdiction must be established for a contested case review of departmental action before a decision on the merits of the case can be made. The applicable departmental policy states:

SSA's determination that disability or blindness does **not** exist for SSI purposes is **final** for MA if:

- . The determination was made after 1/1/90, **and**
- . No further appeals may be made at SSA, **or**
- . The client failed to file an appeal at any step within SSA's 60-day limit, **and**
- . The client is **not** claiming:

- .. A totally different disabling condition than the condition SSA based its determination on, **or**
- .. An additional impairment(s) or change or deterioration in his condition that SSA has **not** made a determination on.

Eligibility for MA based on disability or blindness does **not** exist once SSA's determination is **final**. PEM, Item 260, pp. 2-3.

The relevant federal regulations are found at 42 CFR Part 435. These regulations provide: "An SSA disability determination is binding on an agency until that determination is changed by the SSA." 42 CFR 435.541(a)(2)(b)(i). This regulation also provides: "If the SSA determination is changed, the new determination is also binding on the department." 42 CFR 435.541(a)(2)(b)(ii). These federal mandates have been incorporated in the department's policy at PEM Item 260.

The evidence of record verifies claimant received a final SSA determination and no appeal was taken (See Finding of Fact #4 above). Claimant is now alleging the same impairments the SSA already reviewed. Consequently, under the above cited regulations and state policy, no jurisdiction exists for this Administrative Law Judge to proceed on the merits of this case. The status quo must remain intact. The department's action must remain upheld.

Furthermore, even if a full analysis was required, claimant would not qualify for a disability allowance because 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 alcohol or drugs, his remaining limitations would not be disabling.

The evidence of record is clear. All of the competent, material and substantial evidence supports a finding claimant is actively engaged in prescription drug abuse. None of his conditions, standing alone or combined, support his chronic need for narcotic dosages at the level he is seeking them. Absent the physically and mentally impaired state claimant finds himself in due to his drug abuse, he has shown no impairments to employability.

Michigan administers the federal MA program. In assessing eligibility, Michigan defers to the federal guidelines. These federal guidelines state in 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).

...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 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.

...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).

The federal regulations are very specific regarding the type of medical evidence required from an applicant to establish disability. The regulations essentially require laboratory or clinical medical reports consistent with the applicant's reported symptoms, or with his/her treating doctor's statement 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).

...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.

...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).

The medical documentation in claimant's file is insufficient to indicate the residuals from his past "accidents" would interfere with his ability to engage in any number of unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. Put simply, when taken as a whole, the evidence in this file fails to meet any of the requirements necessary to qualify for disability-based MA. Consequently, claimant's disputed application must remain denied based on lack of jurisdiction, or in the alternative, for lack of severity shown and/or ongoing substance abuse.

#### 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.

Accordingly, the department's action is AFFIRMED.

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

Date Signed: [REDACTED] \_\_\_\_\_

Date Mailed: [REDACTED] \_\_\_\_\_

**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]