

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: 2008-9959
Issue No: 2009
Case No: [REDACTED]
Load No:
Hearing Date:
April 16, 2008
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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.

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA-P) application?

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 6/26/07, claimant applied for MA with the Michigan DHS.
- (2) Claimant did not apply for retro MA.
- (3) On 9/7/07, the MRT denied.
- (4) On 9/13/07, the DHS issued notice.

(5) On 11/27/07, claimant filed a hearing request.

(6) Claimant testified at the administrative hearing that he had an SSI application pending with the Social Security Administration (SSA). To date, claimant has not informed the DHS of a favorable decision and presumably has received an unfavorable decision.

(7) On 3/18/08, the State Hearing Review Team (SHRT) denied claimant.

(8) As of the date of application, claimant was a 44-year-old male standing 5' 11" tall and weighing 188 pounds. Claimant's BMI Index is 26.2, classifying him in the overweight range. Claimant has a GED.

(9) Claimant has an alcohol problem. Claimant's primary alleged impairment is listed in claimant's packet as: "acute alcohol withdrawal r/o delirium tremor." Exhibit 5. Claimant testified that he does not smoke. Contrary evidence indicates that claimant is a heavy smoker. See Exhibits 3, 26.

(10) Claimant does not have a driver's license testifying that he drove on a suspended license due to DUIs.

(11) Claimant is not currently working. Claimant's work history is as a mechanic. Claimant lists 2005 as the last time that he worked as a mechanic where he indicates that he separated from the position due to "injured knee." See Exhibit 8.

(12) Claimant alleges disability on the basis of acute alcohol withdrawal.

(13) The 3/18/08 SHRT findings and conclusions of its decision are adopted and incorporated by reference to the following extent:

In 8/07 hospitalized with acute alcohol intoxication/withdrawal with alcoholic cirrhosis, confirmed by ultrasound. Liver was not enlarged, nor did he exhibit any ascites; however, liver enzymes were elevated. Developed a right deep vein thrombosis (upper extremity) during hospitalization. Condition improved with treatment. Reported consuming a case of beer and a fifth of vodka per day. Denied per 20 CFR 416.909.

(14) In June and July, 2007, claimant was hospitalized due to acute ethanol intoxication, delirium tremors, and withdrawals. Final diagnosis for the July, 2007, hospitalization states: 1) ethanol intoxication; 2) delirium tremors; 3) hyponatremia; 4) hypokalemia; 5) liver failure; 6) osteoarthritis; 7) alcoholic nephritis. Exhibit 11. Claimant was advised to abstain from “alcohol, smoking and drugs.” Exhibit 12.

(15) Claimant’s medical evidentiary file is replete with acute ethanol intoxication, withdrawal, and medical issues related to alcoholism. Claimant’s alcoholism is material to his medical complaints.

(16) The undersigned Administrative Law Judge was on a scheduled leave of absence from 8/1/08, returning full time 2/1/09. No pending cases were reassigned while on the leave; no protected time afforded before or after the leave for issuing decisions.

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).

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 CFR 416.901). DHS, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses. Michigan administers the federal Medicaid program. In assessing eligibility, Michigan utilizes the federal regulations.

Prior to any substantive review, jurisdiction is paramount. Applicable to the case herein, policy states:

Final SSI Disability Determination

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.

Relevant federal regulations are found at 42 CFR Part 435. These regulations provide:

“An SSA disability determination is binding on an agency until the determination is changed by the SSA.” 42 CFR 435.541(a)(b)(i). These regulations further provide: “If the SSA determination is changed, the new determination is also binding on the agency.” 42 CFR 435.541(a)(b)(ii).

In this case, claimant had an SSI application pending as of the date of the administrative hearing. Claimant has not informed the DHS that he received a favorable decision and thus, it is rational to presume that he has received an unfavorable decision. As noted above, that decision would be binding on the state department.

However, this Administrative Law Judge notes that there is no verification contained in claimant's file. Thus, in the alternative, the sequential analysis will be applied.

Relevant federal guidelines provide in pertinent 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.

The federal regulations require that several considerations be analyzed in sequential order:

...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.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. 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 no, the analysis continues to Step 2.
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 416.909(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 that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(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. Sections 200.00-204.00(f)?
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? This

step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application claimant has the burden of proof pursuant to:

...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).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. 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 sure, 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 is not ineligible at the first step as claimant is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities in claimant's favor, this Administrative Law Judge (ALJ) finds that claimant meets both. The analysis continues.

The third step of the analysis looks at whether an individual meets or equals one of the Listings of 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 past relevant work. This step examines the physical and mental demands of the work done by claimant in the past. 20 CFR 416.920(f).

The fourth step is the final step for any alleged mental impairments. While there is some alleged depression in the medical packet with regards to claimant, there is no medical evidence to indicate that the depression rises to statutory disability meeting the requirements at 20 CFR 416.928. The analysis will continue with regards to the remaining alleged physical problems-- claimant's alcoholism.

In this case, this ALJ finds that claimant's physical problems do not allow claimant to return to past relevant work based on the medical evidence and thus, the analysis continues.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g).

In this case, due to claimant's continuing alcoholism, delirium tremors, intoxication, and withdrawal, this Administrative Law Judge finds that claimant could not do a full range of sedentary work pursuant to Medical Vocational Grid Rule footnote 201.00(h).

However, the Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality

becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

Put another way, when the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

In this case, all of claimant's related medical/physical conditions are related to claimant's acute alcoholism, delirium tremors, intoxication, poisoning, and withdrawals. Claimant did not exhibit independent liver cirrhosis, which would be affirmed by the ascites even though his liver enzymes were elevated. See 3/18/08 SHRT Decision. Claimant's condition improved with treatment. Claimant's alcoholism is material and thus, no eligibility exists.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were correct.

Accordingly, the department's determination in this matter is UPHELD.

/s/ _____
Janice Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 13, 2009

Date Mailed: November 14, 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 mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

JS/cv

cc:

