

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: 2009-1244
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 10, 2009
Jackson 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 10, 2009. 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) On May 13, 2008, claimant applied for a disability-based monthly cash grant (SDA) and medical coverage (MA).

(2) The department's denial was upheld on appeal by Hearing Decision dated November 25, 2008 (Register #2008-27044).

(3) While this appeal was pending, claimant filed another MA/SDA application two months after her first one (Application Date: 7/30/08)(See also Finding of Fact #1 above).

(4) When that application was denied, claimant again filed a hearing request.

(5) Claimant's second hearing was held on March 10, 2009.

(6) Claimant has no driver's license because it was suspended secondary to an impaired driving conviction.

(7) Claimant was attending outpatient counseling for depression at [REDACTED] but she quit going about two months ago (1/09) and she has not taken her prescription medication ([REDACTED]) since then, per self report.

(8) Claimant's [REDACTED] report, dated April 28, 2008, states in relevant part:

...She just wanted some help. She did not think she would like to kill herself, but just wanted help and didn't want to be an inpatient. She has been using alcohol and drugs also. Drinking alcohol whenever it is available—mostly three to four times a week. She says she drinks up to a pint and then she passes out. She is unable to give me a specific amount that she usually drinks when she does drink. The patient says that she has been using cocaine and marijuana whenever it is available. She said she understands that it does not help her mood. No treatment for substance abuse or mental illness. No history and no complaint for anxiety or psychosis...

...She is sitting across the table. Dressed appropriately. Personal hygiene normal, relaxed. Alert and oriented in three. Affect appropriate. Mood pleasant. No depression or depressive equivalent. No psychosis. Speech normal in tone and content. Thought processes logical and goal directed. Judgment and insight are not impaired. Short and long-term memory intact. Abstraction so-so. She is not suicidal or homicidal. I don't see any depression. I don't see that depression which she might have which we can label as major depression that has cleared in two, three or four days in the hospital. I think it is Dysthymia...(Department Exhibit #1, pgs 19 and 20).

(9) Historically, claimant has a pattern of depression medication non-compliance, documented by the following treatment note, dated October 11, 2006:

...Major depression. Not controlled because of non-compliance. I will restart [REDACTED] (her former prescription antidepressant).

...I had a detailed discussion with her about the importance of compliance as it relates to her health as well as to the office operations. She has made several appointments and no showed...(Department Exhibit #1, pg 33)(See also Finding of Fact #7 above).

(10) Claimant was started on [REDACTED] when she spent three days in the hospital (4/14/08-4/17/08) for depression (Department Exhibit #1, pg 22).

(11) Claimant was having (and still has) many of the situational stressors related to financial problems, unemployment and possible eviction; enrollment in [REDACTED] [REDACTED] was recommended (Department Exhibit #1, pg 22).

(12) Claimant's drug abuse panel at hospital admission in April, 2008 was positive for cocaine (Department Exhibit #1, pg 26).

(13) Chest x-rays taken in May and October, 2007 were negative, as was claimant's cervical spine (neck) x-ray (Department Exhibit #1, pgs 58 and 71).

(14) Claimant's pulmonary function test taken in October, 2006 also was normal, despite her 20+ year smoking habit (Department Exhibit #1, pg 70).

(15) Claimant is 44 years old; she stands 5'6" tall and is morbidly obese at 305 pounds (BMI=49.2); she is right hand dominant.

(16) Claimant has high blood pressure and Gastroesophageal Reflux Disorder (GERD), both adequately controlled with standard medications; her doctor also has prescribed an iron supplement.

(17) Claimant has a sporadic, unskilled work history; she was fired from her last fast food restaurant job in December, 2007 for employee misconduct (Department Exhibit #1, pgs 7 and 9).

(18) Claimant's doctor said she had no physical impairments which would prevent her from working at any job or require any assistance with activities of daily living (Department Exhibit #1, pg 14).

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.

When determining whether an individual is legally disabled 20 CFR 416.920 requires the trier-of-fact to follow a five-step, sequential evaluation process by which current work activity, the severity of the impairment, residual functional capacity and vocational factors like age, education and past work experience are assessed in that order. If disability can be ruled out at any step, analysis of the next step is not required.

First, the trier-of-fact must determine if the individual is working, and if so, whether that work constitutes substantial gainful activity. 20 CFR 416.920(b). In this case, claimant stopped doing restaurant work in December, 2007 when she got fired; consequently, the analysis must

continue. However, it must be noted claimant's exit from the competitive work force was not in any way related to her allegedly disabling condition. Therefore, it does not establish the onset, severity or durational factors necessary for a disability allowance.

Furthermore, at Step 2, the law provides that, if treatment (or medication) has been prescribed which could be expected to restore an applicant's ability to work and that applicant fails to follow the treatment without good reason, the disability is considered to have ended in the first month in which the treatment/medication was not followed. 20 CFR 416.994(b)(4)(iv). In this case, the record reveals multiple instances of medication non-compliance in favor of ongoing polysubstance abuse instead.

The current federal regulations are clear. Drug addiction and/or alcoholism disqualifies an applicant from disability benefits if those conditions are material, contributing factors to his or her inability to engage in substantial gainful activity. Put simply, federal law no longer permits a finding of disability for those persons whose primary impairment is substance abuse/dependency (PL 104-121).

"Material to the determination" means that, if the applicant stopped using drugs or alcohol, his or her remaining limitations would not be disabling. This Administrative Law Judge finds that long-term abstinence from polysubstance abuse, in combination with adherence to claimant's prescribed antidepressant medication, would significantly decrease her symptoms to the point where she would be fully capable of maintaining simple, unskilled employment. As for claimant's debilitating pain complaints and other symptoms, they are completely unsupported by the objective medical test results and clinical records contained herein. Consequently, claimant's non-compliance requires a disability disallowance in this case.

Additionally, a second basis exists for the denial of claimant's disputed application, namely, that her chronic, ongoing polysubstance abuse is material to her disability because it negatively impacts her entire lifestyle and significantly undermines any return to the competitive work force. As such, claimant's disputed MA/SDA application must remain denied based on failure to follow prescribed treatment and materiality of ongoing substance abuse during the disputed period. Claimant presented absolutely no new medical evidence to support a change in the Hearing Decision issued on November 25, 2008 (See Finding of Fact #1 and #2 above).

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 July 30, 2008 MA/SDA application because she does not meet the criteria necessary for approval.

Accordingly, the department's decision 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.

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