

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: 2009-1370
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 3, 2009
Kalamazoo 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 February 3, 2009. Claimant and his wife 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) Claimant is a married, 28-year-old nicotine addict with a sporadic, unskilled work history in mostly temporary service positions secondary to his polysubstance abuse history (Department Exhibit #1, pgs 7, 9, 17-20, 41-46 and 97; Client Exhibit A, pg 8).

(2) [REDACTED] records reveal treatment for multiple past suicide attempts (via drug overdose), most recently in January 2007, ten months prior to his marriage (wedding date:

[REDACTED].

(3) At that time claimant was homeless, he didn't have any family support and he was jailed on a [REDACTED] conviction after he was medically stabilized for the drug overdose during the four day hospitalization (1/11/07-1/15/07)(Department Exhibit #1, pgs 97-101).

(4) Claimant stands 6'1" tall, weighs 235 pounds and is right hand dominant, per self report.

(5) Claimant has a general equivalency diploma (GED) but no driver's license because he was convicted of an alcohol-related offense in 2005 [REDACTED]), yet he continued to drive, thereby incurring additional legal problems and fines.

(6) While hospitalized in June 2008, claimant filed an MA/SDA application claiming he is disabled due to mental problems and chronic left ear discharge (otorrhea) likely secondary to "some kind of mastoid surgery" he had at age ten (Department Exhibit #1, pgs 15 and 16).

(7) When that application was denied claimant filed a hearing request to dispute the issue and his hearing was held on February 3, 2009.

(8) The hearing was held by telephone conference; claimant participated fully without hesitancy in response and demonstrated minimal hearing difficulty consistent with the hearing test results submitted which measured 100% speech discrimination on the right with slightly reduced left ear discrimination at 92% (Department Exhibit #1, pgs 15 and 16).

(9) Claimant's treating doctor has prescribed ear drops to minimize claimant's longstanding drainage and infection flare-ups.

(10) Additionally, claimant has been a client at the [REDACTED] for maintenance [REDACTED] doses secondary to his admitted narcotic dependence (Department Exhibit #1, pgs 78 and 79).

(11) Claimant's June 2008 hospitalization was necessary because he decided to melt his [REDACTED] and inject it bilaterally into his wrists to get high which resulted in cellulitis of both his hands, treated with standard antibiotics and successfully resolved (Department Exhibit #1, pgs 17-20 and 43-44).

(12) After hospital discharge, specifically on June 25, 2008, claimant underwent EEG testing which was normal, as were the results of a brain CT scan done on March 15, 2008 (Department Exhibit #1, pgs 83 and 103).

(13) As of claimant's disability hearing date (2/3/09) he reported he had been actively participating in outpatient [REDACTED] counseling and [REDACTED] was being prescribed for self reported depression.

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.

...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).

...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).

...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 evidence presented establishes no severe physical or mental impairments existing in claimant's case. In fact, the records overwhelmingly support a finding claimant's only impairments during the disputed period were directly related to his ongoing, illicit drug abuse.

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 drugs or alcohol, his remaining limitations would not be disabling (See also 20 CFR 416.435).

Furthermore, 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 symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. Claimant's existing prescription medications appear

fully capable of managing his symptoms as long as medication compliance is maintained and illicit drug use ceases permanently.

Consequently, in the absence of any medical evidence to the contrary, this Administrative Law Judge concludes claimant's MA/SDA application must remain denied based on materiality of his ongoing drug abuse during the disputed period, in concurrence with the department's State Hearing Review Team (SHRT) decision dated May 27, 2009.

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 by MA/SDA disability standards.

Accordingly, the department's action is AFFIRMED.

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

Date Signed: January 13, 2010

Date Mailed: January 14, 2010

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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