

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER:

[REDACTED]

Reg No. 200918303
Issue No. 2009
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: June 3, 2009
Ingham 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 the claimant's request for a hearing. After due notice, a telephone hearing was held on June 3, 2009. 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 a material fact:

1. Claimant is a divorced, 47-year-old, ongoing cigarette smoker with a general equivalency diploma (GED) and an unskilled work history who resides with his mother in [REDACTED].
2. Claimant stands approximately 6'0" tall and weighs approximately 170 pounds; he is right hand dominant, per self report.
3. Claimant has not worked anywhere since "2004 or 2005," per self report.
4. On December 8, 2008, claimant applied for disability-based medical coverage (MA) shortly before a brief hospitalization at [REDACTED].

██████████ (12/15/08-12/17/08) secondary to alcohol withdrawal and alcoholic cardiomyopathy in conjunction with anxiety, depression and high blood pressure (Department Exhibit #1, pgs 47-49).

5. When claimant's disability application was denied he requested a hearing, held by conference telephone on June 3, 2009.
6. Claimant's December 2008 hospital admission record states in relevant part:

...He stated that he drank about 1 to 2 liters of vodka prior to the date of admission and approximately 1 to 2 liters of vodka the day before that. He recently had a stay at ██████████ ██████████ for 3 days and at that time upon discharge he admitted to binge drinking. He has a past history of ██████████ and ██████████ abuse as well. He feels better in the ER after receiving ██████████ and Z██████████ some IV fluids. He does admit to running out of medications, including his ██████████ and T██████████. He had a recent stay here in IRMC for a suicide attempt approximately 1 week ago... (Department Exhibit #1, pg 47).

7. While hospitalized the doctors restarted claimant on standard cardiac medications; he was discharged in good condition with a recommendation to seek inpatient alcohol rehabilitation (Department Exhibit #1, pgs 48 and 49).
8. Claimant stated at the hearing he did not seek substance abuse or community mental health treatment/counseling; however, he indicated he now attends AA meetings regularly and he has maintained sobriety since his most recent cardiac hospitalization.
9. Additionally, claimant reported he is compliant with the standard cardiac medications being prescribed, and also, his treating doctor has added Ativan/Valium/Lexapro for self-reported depression and anxiety.
10. Claimant's medical records also reveal he spent an overnight in ██████████ in October 2008 (10/7/08-10/8/08).
11. This October 2008 hospital admission record states in relevant part:

...The patient reports that he is a binge drinker. He episodically will drink a half-gallon-plus of alcohol he states about six times a year. He reports that he recently had a binge and he also did something that is out of character for him. He did cocaine for the first time at the same time...

...Patient states that he is not feeling depressed. He does report having some panic attacks, though, but he states that he is not suicidal at this time. He does report having some financial stressors, though. He has associated symptoms of insomnia. He does report that he takes [REDACTED] 2 mg on an as-needed basis for anxiety because of panic attacks...

...All symptoms are negative except for the following: patient reports having glasses for impaired vision. He has hypertension, coronary artery disease, "enlarged heart," gastroesophageal reflux disease, seizure disorder having had a grand mall seizure about six months ago and then also in the past week due to being off his medications. He also reports having had a cardiac catheterization on two occasions and has a history of having had engorgement of a testicle that resolved on its own without surgery... (Department Exhibit #1, pgs 3 and 4).

12. Claimant's October 2008 hospitalization diagnoses were: 1) alcoholic abuse/dependence and 2) Depressive Disorder, NOS (Department Exhibit #1, pg 5).
13. At hospital admission in October 2008 claimant stated he was a self-employed handyman, fixing peoples' homes and trimming houses (Department Exhibit #1, pg 4).
14. Claimant has no driver's license because it was suspended several years ago secondary to an alcohol-related offense, thus making self-employment jobs (to/from) more difficult to obtain.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 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(s), 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, the documentary evidence of record reveals claimant was working sporadically in a handyman's capacity two months before his December 2008 hospitalization (See Finding of Fact #13 above). Since claimant's cardiac

condition has been shown to have been non severe, this trier-of-fact reasonably infers he is capable of periodically doing this type of work. However, this sporadic employment does not rise to the level necessary to be considered substantial gainful work activity; consequently, the analysis must continue.

At Step 2, the law provides that if treatment (or medication) has been prescribed which would 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 treatment was not followed. 20 CFR 416.994(b)(4)(iv). In this case, the record clearly establishes claimant's failure to maintain compliance with his cardiac medications directly lead to his December 2008 hospitalization. Additionally, claimant has been repeatedly medically advised to seek inpatient alcohol treatment. His failure to do so leads this Administrative Law Judge to question his credibility regarding sustained and complete remission, given the longstanding duration/severity of this particular impairment.

The law regarding ongoing substance abuse is clear. The current federal regulations no longer allow drug addiction or alcohol to qualify as disabling if it is a material, contributing factor to the applicant's inability to engage in substantial gainful work activity. Put simply, federal law no longer permits a finding of disability for those persons whose primary impairment is substance abuse/dependency (P.L. 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.

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. This Administrative Law Judge finds claimant's current prescription medications are fully capable of adequate symptom management, given the objective medical evidence submitted. Therefore, this Administrative Law Judge finds claimant's adherence to prescribed medication and treatment, in combination with alcohol remission would reduce all symptoms to the point where claimant would be fully capable of maintaining any number of simple, unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. As such, claimant's disputed application must remain denied in conjunction with the department's State Hearing Review Team (SHRT) decision dated April 29, 2009 (Department Exhibit #2).

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

December 8, 2008 MA application because he did 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: November 22, 2010

Date Mailed: November 23, 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.

MBM/db

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