

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: 2009-20611
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 25, 2009
Sanilac 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 June 25, 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 as material fact:

(1) Claimant is a divorced, 51-year-old pack per day smoker with a 12th grade education; he stands approximately 6'0" tall and weighs approximately 185 pounds (Department Exhibit #1, pgs 5, 6 and 40).

(2) Claimant has been diagnosed with cirrhosis of the liver secondary to an extensive alcohol abuse history (1 pint of vodka 3 to 4 times weekly for 35 years)(Department Exhibit #1, pgs 77 and 89).

(3) Claimant has a history of unskilled factory work but he has not been employed since he got fired from his last job in 2005 (Department Exhibit #1, pg 6).

(4) Claimant has resided with his mother since just before he got fired.

(5) Claimant has no driver's license because it was suspended secondary to multiple past alcohol-related convictions.

(6) Claimant filed an MA/retro-MA application on January 13, 2009, because he was hospitalized through the Emergency Room (ER) on December 12, 2008 in deteriorated physical condition with nausea, vomiting, lower extremity shakiness and incoordination (Department Exhibit #1, pg 65).

(7) Claimant's ER notes indicate he had no regular physician (Department Exhibit #1, pg 65).

(8) During claimant's week-long hospitalization (12/12/08-12/18/08), he was treated for pancreatitis, renal insufficiency, anemia, inflamed gall bladder and possible gall stones, as well as low potassium levels (hypokalemia).

(9) All these conditions but his ongoing alcohol use improved and claimant was discharged home in stable condition with the recommendation he abstain from alcohol use and attend Alcoholic Anonymous (AA) meetings (Department Exhibit #1, pgs 88 and 100).

(10) Claimant's disability appeal hearing was held on June 25, 2009, approximately five months after his hospitalization.

(11) At that time, claimant reported the only medications he was taking were [REDACTED] and [REDACTED] supplements.

(12) Participation in the recommended alcohol abstinence/treatment was not acknowledged.

(13) Claimant's blood tests from February, 2009 (two months post-hospitalization) verified hemoglobin at 14 and hematocrit at 39.6, both greatly improved from hospitalization (Department Exhibit #1, pg 18).

(14) A Medical Examination Report (DHS-49) dated February 23, 2009 indicates claimant could return to work as of April, 2009; no mental impairments were noted (Department Exhibit #1, pg 12).

(15) All claimant's major systems except kidney function were reportedly within normal range (AST: 587, ALT: 170, Bilirubin: 1.6 and ALK Phos: 162, which is not uncommon given his extensive alcoholic abuse history)(Department Exhibit #1, pg 11).

(16) On March 3, 2009, the department's Medical Review Team (MRT) denied claimant's MA/retro-MA disability application based on the above-referenced medical evidence (Department Exhibit #1, pg 1).

(17) On May 15, 2009, the department's State Hearing Review Team (SHRT) issued a prehearing decision concurring with the local office's denial (Department Exhibit #2).

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).

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.

...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).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...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).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(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).

...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).

...Evidence that you submit or that we obtain may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

Claimant does not qualify for the MA/retro-MA coverage he seeks because nothing has been presented by him to establish the existence of a medical condition severe enough to preclude employability for the requisite duration (12 months). Therefore, claimant is not eligible for a disability allowance at the threshold level.

Furthermore, the evidence of record supports a second basis for denial. The current governing regulations are clear. Alcoholism and/or drug addiction no longer provide a basis for a finding of disability if the applicant's alcoholism and/or drug addiction is a material, contributing factor to his or her 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 (PL 104-121).

“Material to the determination” means that, if the applicant stopped using alcohol or drugs, his or her remaining limitations would not be disabling. This Administrative Law Judge finds that long-term abstinence from alcohol consumption, in combination to adherence with the recommended Alcoholic Anonymous treatment would significantly decrease claimant's

symptoms to the point where he would be fully capable of maintaining simple, unskilled employment, especially in light of the absence of any objective medical evidence to the contrary, and in light of the fact that all the medical conditions (except gall stones) claimant was treated for in December, 2008 were secondary to his ongoing alcoholism. Consequently, claimant's continued alcoholism also requires a disability disallowance in this case because it negatively impacts his entire lifestyle and significantly undermines any return to the competitive work force. As such, claimant's disputed MA/retro-MA application must remain denied.

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 eligibility 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: June 29, 2009

Date Mailed: June 30, 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 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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MBM/db

cc:

