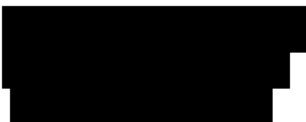


STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER:



Reg No. 200929537  
Issue No. 2009  
Case No. [REDACTED]  
Hearing Date: September 3, 2009  
Genesee 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 September 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 as material fact:

1. Claimant is a single, 42-year-old, pack per day smoker with a general equivalency education (GED) and an extensive polysubstance abuse history (e.g., marijuana/cocaine/acid/alcohol) (Department Exhibit #1, pg 3, back and pg 6, front).
2. On December 18, 2008, claimant applied for disability-based MA (medical coverage).
3. When the department denied claimant's application he filed a hearing requested dated June 12, 2009.
4. Claimant's hearing was held by conference telephone on September 3, 2009.

5. The following week (9/10/09), claimant was scheduled for a simple, outpatient procedure (hemorrhoidectomy) under local anesthesia with the typical recovery period being two weeks, per self report.
6. Additionally, three weeks before claimant's hearing he underwent a simple, outpatient procedure for a benign cyst with no adverse residuals, per self report.
7. Claimant stands approximately 5'10" tall and is medically obese at approximately 234 pounds (BMI=33.6), per self report.
8. As of the hearing date (9/3/09), claimant lived alone; additionally, he had a valid driver's license and performed all household chores independently (e.g., cooking/laundry/grocery shopping)(Department Exhibit #1, pgs 3 and 13, front).
9. Claimant has a sporadic, unskilled work history due to extensive jail and prison time, most recently released in 2005, per self report; additionally, claimant admitted to continued use of marijuana as recently as "a couple weeks" before the hearing.
10. Claimant's intermittent jobs were in medium exertional activities like roofing, construction, groundskeeping and general labor positions (Department Exhibit #1, pg 3, front).
11. In 2007, claimant was diagnosed with Bipolar Disorder (Mixed) during a brief psychiatric hospitalization secondary to suicidal ideation (Department Exhibit #1, pg 3, front).
12. Additionally, claimant has a remote psychiatric hospitalization for an attempted suicide during his teen years (Department Exhibit #1, pg 3, front and pg 6, back).
13. As of claimant's hearing date (9/3/09), he had been engaged in [REDACTED] outpatient counseling services for approximately three years.
14. During an independent psychological evaluation conducted on April 29, 2009, claimant related in a cooperative fashion with no oppositionality or limit testing, and also, he demonstrated the ability to smile/laugh spontaneously throughout the interview (Department Exhibit #1, pg 3, front).
15. The independent psychologist recommended assistance with benefit management (if awarded, due to claimant's history of drug

dependency and/or alcoholism (Department Exhibit #1, pg 4, front)(See also Finding of Fact #9 above).

16. As of claimant's hearing date (9/3/09), the psychotropic medications being prescribed for claimant's Bipolar symptoms were [REDACTED] (Department Exhibit #1, pg 6, back).
17. Claimant also reported constant pain and stomach upsets treated with [REDACTED] syrup; however, no objective medical evidence was presented by or for him at hearing to verify any diagnosed conditions, or combination of conditions, which could reasonably be expected to reduce his self-reported symptoms.
18. Additionally, during claimant's independent psychological evaluation on April 29, 2009, he admitted he wanted to get his "shit squared away with Social Security [disability]" so he wouldn't have to "stress out over the next bill to be paid" (Department Exhibit #1, pg 3, back).
19. The State of Michigan has adopted the federal, Social Security rules when determining whether or not an applicant is eligible for disability-based MA (medical coverage).

### **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.

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).

Additionally, Social Security Ruling 96-4p (SSR96-4p) states in relevant part:

A “symptom” is not a “medically determinable physical or mental impairment” and no symptom by itself can establish the existence of such an impairment. In the absence of a showing that there is a “medically determinable physical or mental impairment,” an individual must be found not disabled at Step 2 of the sequential evaluation process. No symptom or combination of symptoms can be the basis for a finding of disability, no matter how genuine the individual’s complaints may appear to be, unless there are medical signs and laboratory findings demonstrating the existence of a medically determinable physical or mental impairment.

In addition, 20 CFR 404.1529 and 416.929 provide that an individual’s symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect the individual’s ability to do basic work activities...unless medical signs and laboratory findings show that there is a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the symptom(s) alleged.

...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).

...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).

...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).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

...We will consider whether there are any inconsistencies in the evidence and the extent to which there are any conflicts between your statements and the rest of the evidence, including your medical history, medical signs and laboratory findings, and statements by your treating or examining physician or psychologist or other persons about how your symptoms affect you.... 20 CFR 416.929(c)(4).

...We will consider your statements about the intensity, persistence, and limiting effects of your symptoms, and we will evaluate your statements in relation to the objective medical evidence and other evidence in reaching a conclusion as to whether you are disabled.... 20 CFR 416.929(c)(4).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

[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).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
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 416.920(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? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(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. 20 CFR 416.920(e).
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? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

Claimant is not disqualified from receiving MA at Step 1, because he has not been gainfully employed in several years. However, it must be noted his erratic employment history appears to be related more to his multiple lock-ups and/or drug and alcohol dependency than to any unmanageable physical or mental impairment. In fact, when taken as a whole, the record strongly suggests claimant may be engaging in symptom magnification for secondary gain (i.e., "insurance")(See also Finding of Fact #18 above).

At Step 2, this Administrative Law Judge finds claimant's Bipolar symptoms may produce some non-exertional impairments which could generally affect his overall work performance; however, no severe physical impairments have been shown by the evidence of record existing in this case.

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. Nevertheless, claimant's medically managed Bipolar condition meets the *de minimus* level of severity and duration for further analysis.

At Step 3, the medical evidence on this record does not support a finding that claimant's diagnosed impairment is severe enough to meet or equal any specifically listed impairment; consequently, the analysis must continue.

At Step 4, the medical evidence of record fails to support claimant's contention he is incapable of returning to any of his remote, former jobs. Specifically, no physical impairments have been shown and claimant's mental, emotional and cognitive functions appear fully capable of adequate management with consistent outpatient counseling and the psychotropic medications being prescribed. As such, this analysis could end at Step 4, with a finding of not disabled.

In closing, this Administrative Law Judge would like to set forth the governing rules regarding substance abuse and/or dependency.

The federal regulations do not allow drug abuse and/or alcoholism to qualify as disabling, if either (or both) are material, contributing factors to an applicant's ability to engage in Substantial Gainful Activity (SGA). The state and federal laws simply no longer permit a finding of disability for those persons whose primary impairment is substance abuse/dependency.

"Material to the determination" means that, if the applicant stopped using drugs or alcohol, his or her remaining mental and/or physical limitations would not be disabling. This Administrative Law Judge finds claimant's admittedly ongoing cannabis use is the primary contributing factor to many (if not all) the symptoms he describes, including prolonged depression, poor memory, excessive anxiety, stress and confusion.

In short, this Administrative Law Judge finds claimant's continued drug abuse is the primary contributing factor to the repeated severity of his symptoms, as well as to his lack of motivation to look for work and/or to remain employed. Consequently, even if claimant was not disqualified from disability-based MA at Step 4 of the required sequential evaluation process, his disputed application must remain denied based on active substance abuse.

### **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 18, 2008 MA application.

