

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

IN THE MATTER OF:

[REDACTED]

Reg No. 200930034
Issue No. 2009
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: August 26, 2009
St Clair 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 August 26, 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, high school graduate with two years of post-secondary education (community college) who resides alone in a mobile home in [REDACTED]; he will turn [REDACTED] old on [REDACTED].
2. Claimant is fully independent in all self cares and daily living activities.
3. Claimant stands approximately 6'0" tall and weighs approximately 175 pounds; he is left hand dominant, per self report.
4. Claimant has an extensive substance abuse history ([REDACTED]).

5. In October 2008, claimant was fired from his long-term position as the assistant supervisor of an adult foster care facility because he failed an employee drug test (positive for [REDACTED]) (Department Exhibit #1, pg 8).
6. Two months later, specifically on December 18, 2008, claimant applied for disability-based medical coverage (MA).
7. At all times relevant to the MA application in dispute herein, claimant's outpatient [REDACTED] treatment records verify ongoing polysubstance abuse (1/20/09-6/30/09) (Client Exhibit A, pgs 1-10).
8. When the department denied claimant's MA application he requested a hearing to dispute the issue, held by conference telephone on August 26, 2009.
9. Claimant stated at hearing [REDACTED] injections have been initiated in conjunction with ongoing outpatient counseling in an effort to help him maintain sobriety.
10. Claimant reported he was diagnosed with Bipolar Disorder at some point in the past; however, none of the records admitted at hearing verify this diagnosis.
11. Claimant's only prescription medication as of his hearing date was [REDACTED] which admittedly is sometimes used to stabilize patients with a Bipolar Diagnosis.
12. A Mental Residual Functional Capacity Assessment (DHS-49F) completed by [REDACTED] on [REDACTED] verifies claimant is not significantly limited in any of the cognitive or emotional areas required to be considered in the disability determination process, except slightly limited in his ability to maintain concentration/attention for extended periods (Department Exhibit #1, pgs 34 and 35).
13. Likewise, a Medical Examination Report (DHS-49) completed by claimant's family practice provider on January 14, 2009 verifies he has no severe physical limitations (Department Exhibit #1, pgs 20 and 21).
14. This doctor stated alcoholism was claimant's primary diagnosis (Department Exhibit #1, pg 20).

15. Claimant confirmed the absence of any severe physical ailments at hearing when he testified his only ongoing health-related over-the-counter drug is a low-dose aspirin daily.

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 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).

...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).

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.

...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).

Additionally, the governing federal regulations are very specific when substance abuse is material to an applicant's claim. Simply put, these 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 and/or maintain substantial gainful work activity. The state and federal laws no longer permit a finding of disability for those persons whose primary impairment is substance abuse/dependency. As such, claimant's ongoing substance abuse left the department no alternative but to deny his disputed MA application.

Furthermore, even if a substantive analysis was required, claimant would not qualify for the disability medical coverage he seeks because he has not provided any objective medical evidence to support a conclusion that he has a physical or mental condition, or combination of conditions, severe enough to prevent him from engaging in a wide variety of at least simple, unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. As such, claimant's December 18, 2008 MA application could also be denied for lack of severity shown, as stated on the department's

