

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: 2009-5084
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 5, 2009
Wayne 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 March 5, 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 right-handed, 46-year-old smoker with a general equivalency education (GED) who has been married and divorced five times (Department Exhibit #1, pgs 4A, 4B and 4C),

(2) Claimant suffered multiple gunshot wounds to his abdomen at age 23 which necessitated a colostomy, subsequently reversed at age 25 (Department Exhibit #1, pgs 4B and 4D).

(3) Claimant moved to [REDACTED] from [REDACTED] after his most recent marriage broke up, per self report.

(4) Claimant's past relevant work history consists primarily of supervisory positions (marketing/vending/airport); he also has construction, janitorial and catering experience but he has not been gainfully employed since leaving [REDACTED] (Department Exhibit #1, pgs 3B and 8).

(5) Claimant has been incarcerated multiple times for assaults and other charges; he was most recently released in July, 2008 (Department Exhibit #1, pg 8).

(6) On August 15, 2008, claimant applied for MA alleging his mental problems render him disabled.

(7) In August, 2008, claimant began residing in an adult foster care home for substance abuse problems and depression (Department Exhibit #1, pg 4A).

(8) In July, 2008, claimant was treated by [REDACTED] for a Major Depressive Episode (Department Exhibit #1, pgs 45-84).

(9) Claimant was stabilized on [REDACTED] and [REDACTED] and discharged to transitional housing (Department Exhibit #1, pg 45).

(10) No physical impairments were noted during this hospitalization (Department Exhibit #1, pg 56 and 57).

(11) Claimant's diagnoses are: (1) Antisocial Personality Disorder; (2) Major Depression (recurrent); (3) Bipolar Disorder (depressed type); and (4) Alcohol Abuse (Department Exhibit #1, pgs 4D, 16, 37 and 59).

(12) Claimant was actively engaged in alcohol abuse as of his July, 2008 hospitalization (Department Exhibit #1, pgs 16 and 44)(See also Finding of Fact #7 above).

(13) Claimant does not have a valid driver's license due to an alcohol-related conviction he received in 2007 just before he went to jail on a home invasion conviction; consequently, the owner of the adult foster care facility drives claimant to his outpatient therapy sessions.

(14) Claimant currently attends counseling and medication reviews once a month; [REDACTED] and [REDACTED] have been added to his medication schedule, per self report (See Finding of Fact #9 above).

(15) Claimant stands approximately 5'11" tall and weighs approximately 206 pounds, per self report.

(16) During claimant's independent psychological evaluation in October, 2008, claimant noted he was still drinking "socially" (Department Exhibit #1, pg 4B).

(17) Claimant's speech was described as spontaneous, organized, slow, unpressured and circumstantial, which is precisely how he presented at his MA application denial hearing, held on March 5, 2009.

(18) During claimant's independent psychological evaluation in October, 2008, he was fairly dressed/fairly groomed, his gait was normal but slow, he was in good contact with reality, he admitted he is able to take care of daily chores himself, his primary activity is reading books, and his future plan is to get work; prognosis: fair (Department Exhibit #1, pg 4C).

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).

Medical evidence 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 the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

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.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 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 since 2007 (See Finding of Fact #4 above). Consequently, the analysis must continue. However, it must be noted claimant's exit from the competitive work force was not in any way related to his allegedly disabling condition; therefore, it does not establish the onset, severity or durational criteria necessary for MA eligibility determination purposes.

At Step 2, claimant has established several mental maladies, which, when combined, meet the severity and durational level to move forward to Step 3 in sequential evaluation process.

At Step 3, the medical evidence on this record does not support a finding that claimant's diagnosed impairments, standing alone or combined, are severe enough to meet or equal any specifically listed impairments. Furthermore, it must be noted the law does not require an applicant to be completely symptom free before a 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.

The record reveals claimant's current medication schedule and monthly counseling sessions have stabilized him to the point where he is physically and mentally capable of all activities of daily living. Additionally, no severe physical impairments have been shown. As such, an analysis of Step 4 is required.

At Step 4, claimant has an extensive and varied work history consisting of unskilled and semi-skilled jobs. Nothing on this record establishes claimant is physically or mentally incapable of returning to any number of unskilled jobs currently existing in the national economy, like his

former construction or janitorial work, despite his Antisocial Personality Disorder. Although this trait may prevent a return to supervisory work due to the intensive amount of interpersonal interaction, it is not sufficient to prevent claimant from engaging in a wide variety of unskilled sedentary, light or medium exertional level jobs, as though terms are defined at 20 CFR 416.967(a)(b)(c). As such, claimant's disputed application will be denied at Step 4, based on claimant's residual functional capacity to return to past work.

Additionally, 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 alcohol or drugs, his remaining limitations would not be disabling.

The evidence of record is clear. All the competent, material and substantial evidence supports a finding claimant was actively engaged in alcohol abuse at all times relevant to the filing of his disputed application (See Finding of Fact #6, #7, #12 and #16 above). This Administrative Law Judge finds claimant's persistent alcohol consumption was a major contributing factor to many, if not all the symptoms he describes, including depression, mood swings, confusion and poor memory during the relevant period. As such, claimant's August 15, 2008 MA application could also be denied due to ongoing substance abuse because said abuse is a primary, contributing factor to claimant's inability to look for work and/or to remain employed. This Administrative Law Judge concludes the department properly denied claimant's MA application in concurrence with the department's State Hearing Review Team (SHRT) decision dated December 4, 2008 (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 August 15, 2008 MA application based on a finding he does not meet the criteria necessary for approval.

Accordingly, the department's action is AFFIRMED.

/s/

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

Date Signed:  _____

Date Mailed:  _____

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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