

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: 2009-10213
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 18, 2009
Tuscola 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, an in-person hearing was held on February 18, 2009. Claimant personally appeared and testified. He was assisted by patient advocate [REDACTED].

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA) and State Disability Assistance (SDA) 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, 50-year-old, right-handed high school graduate with an unskilled work history who returned to [REDACTED] from [REDACTED] in 2 [REDACTED]

(2) Claimant lives with a former work colleague and he performs odd jobs around this elderly gentleman's house in exchange for rent, per self report.

(3) Claimant stands approximately 5'3" tall and weighs approximately 156 pounds; he is right hand dominant.

(4) Claimant is fully independent in self cares, and also, he still has a valid driver's license issued in [REDACTED].

(5) Claimant applied for disability-based Medicaid (MA) while residing in [REDACTED] i.

(6) A [REDACTED] done in [REDACTED] on [REDACTED] states in relevant part:

The [REDACTED] reveals severe alcoholism. The [REDACTED] [REDACTED] is consistent with bipolar disorder...His primary problem is alcoholism. He has significant problems and consequences associated with alcohol use, abuse, and dependence. They include difficulties in interpersonal relationship and impairment in work performance. He reported significant concerns about somatic functioning and impairment arising from these symptoms. These types of complaints the claimant is experiencing may range from vague symptoms of malaise to severe dysfunction in specific organ systems. The medical problems that he described appear to be related to alcoholism...Externalizing features such as acting out and projection are his primary defense mechanisms. He blames other people for his problems...He has been through a number of rehabilitation programs, but apparently is still drinking. Test results are consistent with bipolar disorder as well as alcoholism. Because his problems are directly related to alcohol, he does not meet the criteria for medical assistance (Department Exhibit #1, pgs 49 and 50).

(7) On [REDACTED], claimant applied for medical assistance (MA/retro-MA/SDA) in his local Department of Human Services (DHS) office.

(8) Claimant alleges Bipolar Disorder, Depression, Anxiety and Dementia cause him to be completely unable to perform any type of substantial gainful work activity.

(9) Claimant's initial [REDACTED] in [REDACTED] dated [REDACTED],

notes as follows:

He said he stopped drinking whisky after he ran a bar for about [REDACTED] years and then sold it to a relative...(Department Exhibit #2, pg 43).

(10) Claimant has been involved in mental health counseling at [REDACTED] [REDACTED] for more than a year; they too, confirm a Bipolar Disorder diagnosis (mixed, moderate without psychosis)(Department Exhibit #2, pg 34)(See also Finding of Fact #6 above).

(11) In addition to out-patient counseling, a standard psychotropic medication schedule, including [REDACTED] is being prescribed (Department Exhibit #2, pg 34).

(12) Claimant stated at the hearing he has not been employed in four years [REDACTED], when he worked as a [REDACTED] employee; he was fired for not being able to perform job duties as assigned (Department Exhibit #1, pg 54)(See inconsistent employment history report [REDACTED]) at Department Exhibit #1, pg 36).

(13) Additionally, during a community mental health session dated the same month claimant filed his disputed application [REDACTED], he talked about his job repairing houses (Department Exhibit #2, pg 12).

(14) In a different session conducted in June, 2008, claimant stated he was applying for a position on the board of the [REDACTED] because he felt like he would like to help other people acquire housing (Department Exhibit #2, pg 16).

(15) All claimant's community mental health records between [REDACTED] and [REDACTED], confirm ongoing alcohol abuse (Department Exhibit #2, pgs 6-45).

(16) Specifically, claimant's [REDACTED] progress note, dated [REDACTED] (the month after he filed his medical assistance application) states in relevant part:

...Talked to [claimant] about the dangers of drinking while he is on his medication. Educated [claimant] on his medication and what they are prescribed for. Encouraged him to reduce his alcohol intake and take his medications as prescribed. Educated [claimant] on the dangers of drinking as much as he is...He stated that he drinks at least [REDACTED] s a night. He asked some questions about his medications and he said that he was not taking some of them because they were making him sleepy. He stated that he used to drink much more, and admitted that he once had alcohol poisoning from drinking moonshine. He said that he did not think he could ever quit (Department Exhibit #2, pg 6).

(17) At claimant's hearing three months later, on [REDACTED], claimant alleged he had not had a drink in six months.

(18) Claimant alleged a doctor in [REDACTED] did a [REDACTED] of his brain and told him it was "shrinking" (Department Exhibit #1, pg 49).

(19) No objective medical test results verifying claimant's alleged "brain shrinkage" were presented at hearing; however, claimant's medical history is positive for bilateral bladder stent placement secondary to a diverticulitis flare-up in [REDACTED] in [REDACTED] (Department Exhibit #2, pg 57).

(20) In [REDACTED], claimant was treated with outpatient antibiotics for two weeks following a two-day hospital admission, where he was diagnosed with hematuria and infection secondary to persistent fecal material in his bladder (Department Exhibit #2, pgs 57 and 58).

(21) Claimant's [REDACTED] community mental health medication review reveals he appeared alert, pleasant and smiling, with no psychosis, agitation or suicidal ideation (Department Exhibit #2, pg 35).

(22) In fact, all claimant's community mental health records between January and [REDACTED], document a consistent demeanor with appropriate eye contact, rapport, appearance, behavior, mood, affect, speech, thinking and orientation (Department Exhibit #2, pgs 6-38).

(23) In [REDACTED], claimant was busy working on repairing an older home when his case manager arrived for a session (Department Exhibit #2, pg 14)(See also Finding of Fact #13 above).

(24) Claimant's initial psychiatric evaluation ([REDACTED] notes claimant's [REDACTED] [REDACTED] was between [REDACTED] and [REDACTED] throughout the past year (Department Exhibit #2, pg 45).

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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. 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 SDA program differs from the federal MA regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

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 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).

...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).

... [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).

...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).

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/SDA at Step 1, because he has not been gainfully employed in several years; however, the credible evidence of record establishes claimant was physically and mentally capable of repairing houses as recently as



At Step 2, claimant has failed to establish the existence of any severe mental or physical impairment other than alcoholism as the primary cause of his need for continued intervention and counseling. Furthermore, all of the competent, material and substantial evidence of record supports a finding that claimant is still actively engaged in substance abuse, despite his protestations to the contrary at hearing.

The federal regulations no longer allow drug addiction or alcoholism to qualify as disabling, if it is a material, contributing factor to an applicant's ability to engage in substantial

gainful activity (SGA). The federal law simply does not permit a finding of disability for those persons whose primary impairment is substance abuse/dependency.

“Material to the determination” means that, if the individual 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 persistent alcohol consumption is a major contributing factor to many, if not all of the symptoms he describes, including depression, fatigue, mood swings, confusion and poor memory. Furthermore, the record strongly suggests claimant may be engaging in symptom magnification for secondary gain (a disability allowance). Claimant’s inability to remain alcohol free is the primary, contributing factor to his inability to look for work and/or remain employed. As such, this Administrative Law Judge finds the department properly denied claimant’s disputed MA/SDA application in concurrence with the [REDACTED] decision dated [REDACTED] (Department Exhibit #3.

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 [REDACTED] MA/SDA 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: [REDACTED] _____

Date Mailed: [REDACTED] _____

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 mailing 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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