

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: 2009-15545  
Issue No: 2009/4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
May 19, 2009  
Newaygo 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 May 19, 2009. Claimant and his spouse personally appeared and testified.

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 married, 41-year-old nonsmoker with a general equivalency education (GED) who has not worked since before his first of three incarcerations beginning in 2000; he has four children from previous relationships (Department Exhibit #1, pgs 3, 7, 8 and 24).

(2) Claimant's work history before his first incarceration was sporadic, heavy exertional jobs (e. g., hanging drywall, carpentry, construction, tree trimming, carnival work) (Department Exhibit #1, pgs 8, 25 and 76).

(3) Claimant filed two previous disability-based MA/SDA applications on April 18, 2005 and November 14, 2006; the department denied both those applications (Department Exhibit #1, pgs 67-68 and 112-113).

(4) On December 2, 2008, claimant again filed for disability-based assistance (MA/SDA), as did his spouse; when those applications were denied, both parties appealed.

(5) Claimant has an extensive polysubstance abuse history (crack cocaine/alcohol) (Department Exhibit #1, pgs. 3, 7, 18-20 and 34).

(6) At hearing, claimant reported full remission for approximately six months, ever since his most recent inpatient treatment at [REDACTED] (8/9/08-10/7/08)(Department Exhibit #1, pg 4).

(7) Claimant entered outpatient counseling in July, 2008, following a psychiatric admit (7/19/08-7/22/08) for attempted prescription medication overdose ([REDACTED]); claimant said he would not have made this attempt if it were not for his drug use (cocaine/alcohol)(Department Exhibit #1, pg 24).

(8) A July 24, 2008 initial psychosocial assessment indicates claimant likes to work on cars, he goes fishing all the time, he is in a monogamous relationship with his third wife, and he has no problems with sexual function (Department Exhibit #1, pgs 25 and 26).

(9) Claimant does not have a valid driver's license because it was suspended secondary to several alcohol-related convictions (3 DUIL's).

(10) Claimant's treating mental health provider has confirmed Anti-Social Personality Disorder and Bipolar Affective Disorder, Mixed (Department Exhibit #1, pg 26).

(11) Five months later, claimant's mental health progress report indicates good judgment and insight, no active suicidal or homicidal ideations, no active voices or visions and an AIMS score within normal limits; a three month return visit was scheduled (Department Exhibit #1, pg 31).

(12) Claimant's medical history is positive for right testicular pain secondary to chronic right epididymitis; a scrotal support and anti-inflammatories were recommended (Department Exhibit #1, pgs 43 and 50).

(13) Claimant's January, 2008 abdominal CT scan was negative for any obstructions, masses, stones or calculi (i. e., normal test results)(Department Exhibit #1, pg 43).

(14) Claimant got beat up four years ago; he is now alleging the injuries from this incident rise to the level necessary to be qualified for a disability allowance (Department Exhibit #1, pg 96).

(15) A CT scan done at that time revealed no splenic damage, but claimant's chest x-rays evidenced a small left plural effusion, mild degenerative changes in his thoracic spine and no obvious rib fractures (Department Exhibit #1, pgs 83, 95 and 96).

(16) A follow-up examination done on July 20, 2005, found claimant's vital signs to be stable with some tenderness reported in the left posterior ribs at the midclavicular line; claimant's inspiratory effort was at 70% due to guarding secondary to pain, but no rubs, crackles, atelectasis or intercostal retractions were seen (Department Exhibit #1, pg 95).

(17) Claimant's current medication schedule consists of [REDACTED] and [REDACTED] has also been prescribed due to asymptomatic hypothyroidism and [REDACTED] for subjective pain complaints.

(18) Claimant's spouse said at the hearing her husband can't handle physical work because he's "always tired," "has stomach problems" and "pain in his back."

(19) On December 3, 2008, claimant's treating physician completed a Medical Examination Report (DHS-49) opining claimant has a sedentary residual functional capacity (Department Exhibit #1, pg 6).

#### 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.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...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).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;

- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

**Light work.** Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

...To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. 20 CFR 416.967(b).

**Sedentary work.** Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

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).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

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 since before his first incarceration in 2000 (See Finding of Fact #2 above).

At Step 2, claimant's diagnosed physical impairments (chronic right epididymitis, mild thoracic spine degenerative changes and bipolar disorder) meet the *de minimus* level of severity and duration required to continue this evaluation. However, 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. Claimant's documented physical and emotional impairments appear fully capable of adequate symptom management as long as he maintains the current medication schedule.

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; consequently, the analysis must continue.

At Step 4, the record supports claimant's contention he is not physically capable of returning to the general manual labor (heavy exertional activity) he did nine years ago. As such, this analysis must continue.

At Step 5, an individual's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. Claimant is a young individual with a high school equivalency education and an unskilled work history. Consequently, at Step 5, this Administrative Law Judge finds, from the medical evidence of record, that claimant retains the residual functional capacity to perform at least light work, as that term is defined above.

Claimant's biggest barriers to employability appear to be his felony record, in combination with his lack of any recent connection to the competitive work force. Claimant should be referred to [REDACTED] for assistance with job training and/or placement consistent with his skills, interests and abilities. Claimant simply is not disabled under the MA/SDA definitions, because his medical records reveal he can return to other sedentary or light work. As such, claimant's disputed 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/SDA 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: May 20, 2009

Date Mailed: May 26, 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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