

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: 2009-15747

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 20, 2009

Saginaw 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 20, 2009. Claimant 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 nicotine dependent, twice-divorced, 47-year-old male with a limited education (completed 9th grade) who is morbidly obese at 6'0" tall and 380 pounds (BMI=51.5); he is right hand dominant, per self report.

(2) Claimant lives alone in a single story home formerly owned by his deceased sister.

(3) Claimant is fully independent in all self cares and basic daily living activities except driving, because he has no valid driver's license nor does he own a vehicle.

(4) Claimant has a sporadic, unskilled work history (e.g., dishwasher, press operator, assembler, auto detailer, car washer), but he has not been employed anywhere in several years.

(5) On February 19, 2008, claimant filed his most recent disability application (MA/SDA).

(6) When that application was denied claimant filed a hearing request, held by conference telephone on May 20, 2009.

(7) Claimant alleges disability based on reported low back pain and osteoarthritis in his hips and knees combined with Major Depressive Disorder (recurrent/severe).

(8) Claimant has a history of periodic psychiatric hospitalizations for suicide attempts between 2001 and 2003, but he had not been psychiatrically hospitalized for at least one year as of his hearing date, nor was he engaged in any outpatient mental health treatment or counseling.

(9) The only objective medical test results contained in claimant's file, dated January 14, 2003, confirm he has mild bilateral hip and lumbar spine osteoarthritis.

(10) Claimant stated at the hearing he uses over-the-counter pain medication for symptom management.

(11) Claimant has an extensive substance abuse history (ongoing), as evidenced by the personal history he reported during an independent psychological evaluation conducted on September 11, 2008, seven months after the filing of his disputed MA/SDA application, which states in relevant part:

He last worked in 2006 in a factory. He held this position for one week because he was only substituting for someone who was out ill. He struggled with cocaine dependence for 20 years. He did not use cocaine for nearly six months but he has been using again for the past few weeks. He was arrested at least 10 occasions for robbery and domestic violence with the last one year prior. He has spent a total of 3 years incarcerated (Department Exhibit #1, pg 4).

(12) The independent psychologist who conducted claimant's September 11, 2008 evaluation noted his posture and gait were normal, he was clean, cooperative and fully oriented in reality, and his thought/speech patterns were spontaneous and well-organized; however, claimant did appear to have limited intellectual capacity and poor short term memory (Department Exhibit #1, pgs 3-7).

(13) Claimant was diagnosed with Major Depressive Disorder, Anti-Social Personality Disorder and Cocaine Dependence combined with arthritis and degenerative disc disease, per claimant's report (Department Exhibit #1, pg 6)(See also Finding of Fact #7 and #9 above).

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 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.

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.

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).

Psychiatric signs are medically demonstrable phenomena that indicate specific psychological abnormalities, e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception, as described by an appropriate medical source. 20 CFR, Part 404, Subpart P, App. 1, 12.00(B).

Symptoms and signs generally cluster together to constitute recognizable mental disorders described in the listings. The symptoms and signs may be intermittent or continuous depending on the nature of the disorder. 20 CFR, Part 404, Subpart P, App. 1, 12.00(B).

We measure severity according to the functional limitations imposed by your medically determinable mental impairment(s). We assess functional limitations using the four criteria in paragraph B of the listings: activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation. 20 CFR, Part 404, Subpart P, App. 1, 12.00(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).

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).

These steps may also be used as guidelines when a mental impairment is being alleged; consequently, claimant is not disqualified from receiving MA/SDA at Step 1, because he has not been employed in several years (See Finding of Fact #4 and #11 above).

At Step 2, the combined severity of all diagnosed conditions must be assessed. This second step is a *de minimus* standard. Ruling any ambiguities in claimant's favor, this Administrative Law Judge finds the necessary severity and durational criteria have been met. As such, the analysis must continue.

At Step 3, the medical evidence on this record does not support a finding that claimant's physical and mental impairments, standing alone or combined, are severe enough to meet or equal any specifically listed impairments; consequently, the analysis must continue.

At Step 4, claimant has a sporadic, unskilled work history and he has not been employed for several years; consequently, an assessment of the evidence at Step 5 is appropriate.

At Step 5, an applicant's age, education and previous work experience (vocational factors) is generally assessed, unless an alternative basis for disability disallowance has been shown.

Specifically, it must be noted the federal regulations do not allow drug addiction 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 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 ongoing cocaine consumption was the major contributing factor to many of the symptoms described at all times relevant to his disputed MA/SDA application, filed February 19, 2008. These symptoms include ongoing depression, poor memory, anxiety, stress, confusion and memory lapse. This Administrative Law Judge finds

claimant's inability to remain cocaine free was the primary contributing factor to the severity of his symptoms, as well as to his inability to look for work and/or to remain employed. Therefore, claimant was not eligible for MA/SDA based on ongoing substance abuse at all times relevant to his disputed application. As such, that 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 was not disabled by MA/SDA eligibility standards and properly denied his December 19, 2008 MA/SDA application.

Accordingly, the department's actions are AFFIRMED.

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

Date Signed: June 15, 2010

Date Mailed: June 15, 2010

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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