

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: 2009-15753  
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) On February 12, 2008, claimant applied for disability-based medical coverage (MA) and a monthly cash grant (SDA).
- (2) On October 8, 2008, the department denied claimant's application by written notice; consequently, she filed a timely hearing request.

(3) Claimant's hearing was held on May 20, 2009.

(4) Claimant is a single, 38-year-old mother of two minor children; these children reside with their grandmother due to claimant's extensive polysubstance abuse history (crack cocaine/alcohol/marijuana) with multiple relapses despite inpatient and outpatient treatment (Department Exhibit #1, pgs 44-48).

(5) Claimant lives alone and she is fully independent in all self cares and basic living activities.

(6) The month claimant filed her disability application (2/08), she was involuntarily petitioned into the hospital at [REDACTED] where she spent six days [REDACTED] secondary to a cocaine binge which resulted in paranoia, suicidal ideation and psychotic symptoms (Department Exhibit #1, pgs 44-48).

(7) Initially claimant agreed to long-term residential substance abuse treatment at [REDACTED]; she was transferred to [REDACTED]s directly from the hospital but she left against medical advice on February 21, 2008, after having demonstrated minimal compliance with treatment (Department Exhibit #1, pgs 35 and 36).

(8) Claimant's inpatient records from [REDACTED] verify no physical impairments exist in her case except left side molar tooth pain, possible hemorrhoids and possible gonorrhea (Department Exhibit #1, pgs 32 and 33).

(9) Claimant stated at the hearing she left [REDACTED] against medical advice because she knew she could "do it alone" and she alleges no use of illicit substances or alcohol since then.

(10) As of claimant's hearing date her only medications were two antidepressants [REDACTED], as prescribed by the staff psychiatrist at [REDACTED], where claimant was consistently participating in outpatient counseling, per self report.

(11) Claimant also testified she regularly attends [REDACTED] meetings in support of continued abstinence from illicit drugs.

### 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.

When determining whether an individual is legally disabled, 20 CFR 416.920 requires the trier-of-fact to follow a five-step, sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity and vocational factors like age, education and past work experience are assessed, in that order. If disability can be ruled out at any step, analysis of the next step is not required.

First, the trier-of-fact must determine if the individual is working, and if so, whether that work constitutes substantial gainful activity. 20 CFR 416.920(b). In this case, claimant was a waitress and a certified nursing assistant (CNA) until 2003, but the last time she worked anywhere was as a Salvation Army Christmas bell ringer during the 2007 holiday season. As such, the analysis must continue.

At Step 2, the law provides that, if treatment or medication has been prescribed which could be expected to restore an applicant's ability to work, and that applicant fails to follow the treatment without good cause, the disability is considered to have ended in the first month in which the treatment/medication was not followed. 20 CFR 416.994(b)(4)(iv). In this case, the

record reveals multiple instances of noncompliance with substance abuse treatment which could have reasonably been expected to restore claimant's emotional stability, always in favor of a return to polysubstance abuse instead.

The current federal regulations are clear. Drug addiction and/or alcoholism disqualifies an applicant from disability benefits if those conditions are a material, contributing factor to the applicant's inability to engage in substantial gainful work activity. Put simply, federal law no longer permits a finding of disability for those persons whose primary impairment is substance abuse/dependency (PL 104-121).

"Material to the determination" means that, if the applicant stopped using drugs and/or alcohol, his or her remaining limitations would not be disabling. This Administrative Law Judge finds that long-term, continued abstinence from polysubstance abuse, in combination with adherence to prescribed medication and treatment would significantly decrease claimant's symptoms to the point where she is fully capable of engaging in any number of simple, unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases.

Claimant alleges she is in full remission from her alcohol/drug abuse; consequently, no mental or physical barriers exist to her return to the competitive workplace. However, at all times relevant to the filing of claimant's disputed disability application, this Administrative Law Judge finds her chronic, ongoing polysubstance abuse was material because it negatively impacted her entire lifestyle and significantly undermined any chance for return to work. As such, claimant's disputed MA/SDA application must remain denied based on failure to follow prescribed treatment and materiality of ongoing substance abuse.

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 February 12, 2008 MA/SDA application because she did not meet the criteria necessary for approval at that time.

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: June 14, 2010

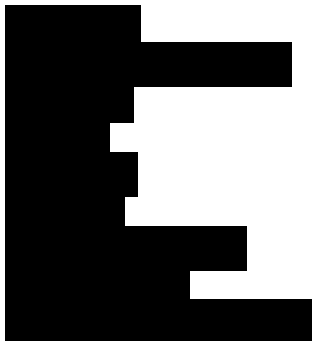
Date Mailed: June 15, 2010

**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.

MBM/db

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