

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER:



Reg No. 200916319
Issue No. 2009/4031
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: May 12, 2009
Van Buren 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 the claimant's request for a hearing. After due notice, a telephone hearing was held on May 12, 2009. Claimant and his mother 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 a material fact:

1. Claimant is a divorced, 32-year-old recidivist felon with three minor children who was most recently released from prison approximately five years ago; he has a general equivalency diploma (GED) (Department Exhibit #1, pgs 8 and 54).
2. Claimant stands approximately 5'11" tall and weighs approximately 215 pounds; he is right hand dominant.
3. After claimant's most recent incarceration he worked briefly at a tire shop marking tires and entering their sticker numbers into the computer inventory; he was fired for excessive absences/lateness

and he reports no other relevant work history (Department Exhibit #1, pgs 8 and 54).

4. Claimant has a valid driver's license and access to a roadworthy vehicle; he has lived with his mother since his last incarceration.
5. As a child claimant took [REDACTED] secondary to an ADHD diagnosis but that drug has not been continued into adulthood.
6. On November 14, 2008, claimant applied for disability-based medical coverage (MA) and a steady, monthly cash grant (SDA) shortly after a brief, voluntary psychiatric hospitalization at [REDACTED] (10/12/08-10/16/08)(Department Exhibit #1, pgs 1-4 and 21-24).
7. Claimant's hospital admission record verifies he was not taking any medications then and he had no physical impairments; however, his drug screen tested positive for [REDACTED] and [REDACTED] (Department Exhibit #1, pgs 2 and 22).
8. This hospital record also verifies ongoing substance abuse; consequently, claimant was diagnosed with substance abuse disorder ([REDACTED]a/alcohol) and mood disorder, NOS (Department Exhibit #1, pgs 19 and 22).
9. These diagnoses are consistent with claimant's longstanding treatment history.
10. The [REDACTED] doctors stabilized claimant's non-exertional mental symptoms with [REDACTED] which were the same medications claimant was taking as of his May 12, 2009 hearing date, per self report (Department Exhibit #1, pgs 1 and 2).
11. At hospital discharge, claimant was fully oriented, cooperative, pleasant and compliant with his prescription medications; consequently, a return to outpatient community mental health counseling was recommended (Department Exhibit #1, pgs 1).
12. Claimant's previous community mental health records (1/08-3/08) verify a consistent failure to appear for scheduled appointments (Department Exhibit #1, pgs 31-34).
13. When claimant returned to community mental health on November 4, 2008, his intake assessment noted he was "looking for help getting his medications, for someone to buy his

medications for him, to find him another home to live in, to drive him around, and to get him a job” (Department Exhibit #1, pg 49).

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 has not worked in several years; consequently, this Administrative Law Judge must proceed to the next step in the sequential evaluation process.

At step two, the law provides that if treatment (or medication) has been prescribed which would be expected to restore an applicant's ability to work, and that applicant fails to follow the treatment without good reason, the disability is considered to have ended in the first month in which the treatment was not followed. 20 CFR 416.994(b)(4)(iv). In this case, the evidence of record clearly supports a finding that claimant's continued lapses in outpatient mental health counseling and his failure to consistently comply with his prescription medication schedule are directly related to symptom continuation. Claimant has been fully advised of, and is clearly aware of, his responsibility to comply with medication and counseling, yet he consistently and continuously disconnects without any good cause reason for his failure to do so.

The controlling law with regard to symptoms is clear. It 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 physical and/or mental symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. This Administrative Law Judge finds claimant's current treatment regimen can be reasonably expected to control his current symptoms as long as compliance is maintained.

Furthermore, the current federal regulations no longer allow drug addiction and/or alcoholism to qualify as disabling if it/they are material, contributing factors to that applicant's inability to engage in substantial gainful work activities. Put simply, federal law no longer permits a finding of disability for those persons whose primary impairment is substance abuse/dependency (P.L. 104-121). "Material to the determination" means that, if the applicant stopped using drugs or alcohol, his or her remaining limitations would not be disabling.

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cc:

