

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: 2009-21370

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 28, 2009

Montcalm 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 July 28, 2009. Claimant and his sister 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 57-year-old Army veteran with a limited education (8th grade) who stands approximately 5'4" tall and weighs approximately 130 pounds.

(2) Claimant resided with his mother for several years until her death in October 2008; he now lives by himself in her former house, has a valid driver's license and access to his mother's former car.

(3) Claimant's past relevant work experience includes heavy equipment operation, general unskilled factory/construction/tree clearance labor, truck driving, forklift operation and grocery store janitorial work (Department Exhibit #1, pg 21).

(4) Claimant left his most recent job in 2002 and he has remained unemployed since then (Department Exhibit #1, pgs 3-5).

(5) On October 22, 2008, claimant filed an application for a disability-based monthly cash grant (SDA) and medical coverage (MA) based on a multitude of vague mental and physical symptoms across multiple body systems such as headaches, side aches, backaches, hand aches, nosebleeds, sore feet and inability to read (Department Exhibit #1, pgs 7 and 8).

(6) Claimant's sister reported his trouble concentrating and focusing, combined with his anger management issues, are his greatest barriers to employability.

(7) WAIS-III testing done during the course of an independent psychological examination in January 2009 assessed claimant's Verbal IQ at 86, his Performance IQ at 105 and his Full Scale IQ at 94 (average range)(Department Exhibit #1, pg 12).

(8) Claimant's demeanor and clinical presentation were documented as follows:

...When he was called in shortly before his appointment time he presented as surly, with averted staring gaze and clipped answers. When usual efforts to establish rapport got minimal response he was asked directly whether he was angry and he acknowledged that something his younger sister had said to him when his mother passed away continues to bother him and keeps him steaming. He also said he is always thinking about his mother as well. On inquiry, his sister reportedly told him she wished he had died instead of their mother. [Claimant] was generally guarded, vague, and egocentric. He sat expansively and frequently stared past the

examiner into a wall while continuing to provide clipped responses to questions. He was unfailingly arrogant and snickered if the examiner professed confusion over some of his answers. As the interview progressed, he kept adding new diagnostic disclosures, often out of context, as if to strengthen his alleged disability status. He made several statements and asked a question that implied he believes the disability determination is a game in which if one is persistent, one will be denied a specific number of times and then approved, regardless of the nature or extent of the alleged disability. There were no signs of impulsivity or distractibility during the interview. He was vigilant to certain examiner behaviors, and asked questions about them. For example, when his medications were being listed and the examiner looked at the contents of the containers, he wanted to know if she was checking to see if he was actually taking the medications and began to spontaneously “explain” that he had more medication at home and always took what he should. Self-esteem appeared to be inflated. Although he emphasized reading and math difficulties he did not appear to be distressed by them and in fact did not appear to be sincere in describing the level of problems. He did mental math with hesitation and read vocabulary items on the test without apparent difficulty. Digit span responses showed no unusual error patterns. He worked quickly on the performance subtests, with time bonus solutions on Block Design. When he was shown the stimulus booklet for certain subtests, he took it off the table and held it on his lap. There were no indications of empathy for others nor any remorse for past incidents in which he caused harm to others either by inadvertence or intent. There was no stated remorse for past legal transgressions (Department Exhibit #1, pgs 9 and 10).

(9) This independent psychologist found claimant was suffering from a Narcissistic Personality Disorder and was engaging in Malingering in accordance with the DSM-IV criteria listed for those impairments (Department Exhibit #1, pg 12).

(10) In October 2008, claimant was seen at the [REDACTED] reporting his usual complaints of myalgia and arthralgia throughout (Department Exhibit #1, pg 33).

(11) Lumbar spine x-rays taken in response to claimant’s low back complaints that day showed no abnormalities (Department Exhibit #1, pg 27).

(12) The Medical Examination Report (DHS-49) completed by claimant's [REDACTED] primary care doctor is consistent with non-severe physical or mental barriers to employability (Department Exhibit #1, pgs 47 and 48).

(13) Claimant reported at hearing he attends outpatient mental health counseling at the [REDACTED] every three months; they have prescribed two antidepressant medications, the names of which he could not recall.

(14) As of claimant's hearing date (7/28/09) he said he was taking only aspirin for his reported "pains".

(15) Claimant's previous pain management prescriptions have included [REDACTED] and [REDACTED] (Department Exhibit #1, pg 8).

(16) Claimant has never been involved in substance abuse treatment or counseling, but he did attend Alcoholics Anonymous several years ago for a remote alcohol problem, now in reported remission.

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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...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).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...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).

...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).

...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).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.

- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

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

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to

decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

Additionally, Social Security Ruling 96-4p (SSR 96-4p) states in relevant part:

A "symptom" is not a "medically determinable physical or mental impairment" and no symptom by itself can establish the existence of such an impairment. In the absence of a showing that there is a "medically determinable physical or mental impairment," an individual must be found not disabled at Step 2 of the sequential evaluation process. No symptom or combination of symptoms can be the basis for a finding of disability, no matter how genuine the individual's complaints may appear to be, unless there are medical signs and laboratory findings demonstrating the existence of a medically determinable physical or mental impairment.

In addition, 20 CFR 404.1529 and 416.929 provide that an individual's symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect the individual's ability to do basic work activities...unless medical signs and laboratory findings show that there is a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the symptom(s) alleged.

Claimant does not qualify for the MA/SDA coverage he seeks because he has not presented any objective medical records to establish the existence of a severe physical or mental condition which would prevent him from performing any number of unskilled jobs currently

existing in the national economy. In fact, when taken as a whole, the record suggests claimant may be engaging in symptom magnification for secondary gain (i. e., a disability allowance). Unfortunately, claimant's medical records do not support a finding that he is disabled as that term is defined under the governing rules. Consequently, 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 denial of claimant's October 22, 2008 MA/SDA application is AFFIRMED.

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

Date Signed: August 24, 2009

Date Mailed: August 25, 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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