

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 200930035

Issue No: 2009/4031

[REDACTED] [REDACTED]
Hearing Date:
September 8, 2009
Ingham 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 September 8, 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 as material fact:

1. Claimant is a divorced, 48-year-old male with a high school education and some minimal post-secondary education at the community college level, but no degrees.
2. Claimant has resided with his mother since his most recent jail outdate, that being in December 2008.
3. On December 13, 2008, claimant sought treatment in [REDACTED] Emergency Department (ED) for facial pain which occurred after he was punched by a friend (Department Exhibit #2, pg 1).

4. Claimant's brain CT scan was normal; however, he was treated for a broken nose (left maxillary sinus fracture) and broken facial bones around the left eye (left orbit rim and left zygomatic arch), then released with instructions for outpatient follow-up (Department Exhibit #2, pg 2).
5. On December 19, 2008, claimant was again admitted to the hospital (██████████ Adult Psychiatric Unit) for treatment of depressive symptoms (Department Exhibit #2, pgs 3 and 4).
6. At admission, claimant was diagnosed with ongoing polysubstance abuse (alcohol/cannabis/cocaine) based on his positive urine drug screen and a blood alcohol level of 0.117; the standard alcohol withdrawal protocol was initiated and claimant was subsequently discharged from ██████████ substance abuse clinic in stable condition (Department Exhibit #2, pgs 5 and 6).
7. Claimant has a seizure disorder (general tonic clonic type) of unknown etiology diagnosed several years ago (2004).
8. Claimant was placed on prophylactic anti-seizure medication at that time (Department Exhibit #1, pgs 6 and 8; Department Exhibit #2, pg 4).
9. Claimant's updated 2008 and 2009 hospital records confirm erratic anti-convulsant medication levels, summarized as follows:

Claimant has a history of substance abuse and seizures. Claimant was admitted in 12/08 due to depression and substance abuse. His mental status was unremarkable. His anticonvulsant level was subtherapeutic at that time. About 10 days later he was admitted due to facial injuries caused by a seizure and fall. His anticonvulsant level was at a toxic level at that time. His physical findings were basically unremarkable. The claimant was admitted in 5/09 and 8/09 and ██████████ levels were toxic. He continued to use alcohol. It is expected that if the claimant abstained from alcohol and illegal drugs and took his medications as prescribed, his seizures would be better controlled (Department Exhibit #3).

10. When the department denied claimant's January 16, 2009 MA/SDA application he filed a hearing request, held September 8, 2009.

11. Claimant stated at hearing he was taking [REDACTED] (instead of [REDACTED]) for seizure control at that time.
12. Claimant has not been involved in any substance abuse treatment or mental health counseling since December 2008 (See Finding of Fact #5 and #6 above).
13. Claimant's past relevant work history primarily is in unskilled cook/kitchen jobs, but he has not been employed since his December 2008 jail outdate (See Finding of Fact #2 above).
14. Claimant alleges disability based on his seizure diagnosis combined with several self-reported symptoms including poor memory, inability to concentrate, general body weakness and ongoing anxiety/depression.

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).

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.

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).

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).

Claimant is not disqualified from receiving MA/SDA at Step 1, because he has not been employed since he got out of jail in December 2008.

At Step 2, the credible evidence of record reveals the conditions which precipitated the filing of claimant's January 16, 2009 MA/SDA application were his history of seizure disorder combined with several brief hospitalizations for depressive symptoms and ongoing polysubstance abuse.

The federal regulations do not allow drug abuse and/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 polysubstance abuse is the major contributing factor to many (if not all) the symptoms he describes, including prolonged depression, poor memory, excessive stress, confusion and memory lapse. This Administrative Law Judge finds claimant's inability to remain drug and alcohol free, in combination with poor compliance in taking his prescribed anti-seizure medications and his failure to seek continued, outpatient mental health and substance abuse counseling are the primary contributing factors to the severity of his symptoms, as well to his inability to look for work and/or to remain employed. Therefore, claimant is not eligible for MA/SDA based on active polysubstance abuse. His disputed application must remain denied in concurrence with the department's State Hearing Review Team (SHRT) in their opinions dated July 29, 2008, February 26, 2010 and May 17, 2010.

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, and thus, properly denied his January 16, 2009 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: September 15, 2010

Date Mailed: September 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

cc:

