

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: 2009-7495
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 17, 2009
St. Clair 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, an in-person hearing was held on March 17, 2009. Claimant did not appear; however, she was assisted by [REDACTED]

ISSUE

Did the department properly deny claimant's June 24, 2008 Medicaid (MA)/retro-MA application for lack of a legally disabling condition shown?

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 June 24, 2008, [REDACTED] filed an MA/retro-MA application for claimant as her authorized representative.

(2) If this application had been approved, medical expenses associated with claimant's brief psychiatric hospitalization for a multidrug overdose between March 29, 2008 and April 3, 2008 would have been covered by MA (Department Exhibit #1, pgs 1-7).

(3) When the application was denied, [REDACTED] filed a hearing request to dispute the denial.

(4) Claimant did not appear at the hearing (3/17/09) despite the fact her representative's request to allow telephone testimony from her was granted; claimant simply did not answer her phone or return a call to the hearing room to offer testimony during the allotted hearing time.

(5) Claimant's authorized representative elected to proceed in claimant's absence.

(6) Claimant's medical records verify she is a divorced, 51-year-old, pack per day smoker who lives alone; she has a high school diploma and two years of post-secondary education (Department Exhibit #1, pgs 7, 12, 13 and 15).

(7) Claimant was laid-off from her most recent job as a press operator in a foam factory (3/06-11/07)(Department Exhibit #1, pgs 12 and 22).

(8) Claimant's other documented work experience is in waitressing/cashiering and child care (Department Exhibit #1, pg 12).

(9) Claimant has a polysubstance abuse history (alcohol/cocaine); she was arrested in [REDACTED] for cocaine possession (Department Exhibit #1, pg 22).

(10) Claimant was referred for an independent psychological evaluation on July 28, 2008, in conjunction with her claim for MA (Department Exhibit #1, pgs 19-22)(See also Finding of Fact #2 above).

(11) When asked to describe the nature and extent of her disability, claimant stated: “I’m laid-off and I have a hospital bill to pay off.” (Department Exhibit #1, pg 22).

(12) As of July 28, 2008, claimant reported she was taking no medications for any physical/mental impairments (Department Exhibit #1, pg 22).

(13) Claimant’s medical records indicate her multidrug overdose was caused by depression about losing her job, not having insurance and having a son in [REDACTED] (Department Exhibit #1, pg 5).

(14) Claimant’s discharge summary indicates she did well with treatment and no longer appeared depressed at discharge (Department Exhibit #1, pg 9).

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).

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.

...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).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...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).

...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).

[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).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(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).

...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).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

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).

At Step 1, no competent documentary evidence or testimony was received to definitively determine claimant's employment status at any time after her November, 2007 layoff or her April, 2008 psychiatric hospitalization. As such, claimant's authorized representative has failed to meet even the threshold element in a disability case, namely, establishing the applicant is unemployed and has been unemployed for the requisite duration due to a diagnosed mental and/or physical impairment. As such, the analysis could end and claimant could be deemed not disabled at the threshold level. However, even if further analysis was required, claimant would not meet the standard necessary to qualify for a disability allowance.

At Step 2, absolutely nothing has been presented by claimant's authorized representative to establish the existence of a medical condition severe enough to prevent employability for a continuous period of at least 12 months. In fact, claimant's psychiatric hospital discharge summary states the treatment was successful and she no longer appeared depressed at discharge. Furthermore, claimant did not appear at the hearing; consequently, no competent testimony was presented to rebut the presumption of successful hospitalization/treatment and recovery well within the 12 month period necessary to qualify for a disability allowance. As such, claimant's disputed MA/retro-MA application must remain denied, for lack of duration and severity shown.

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 June 24, 2008 MA/retro-MA application for lack of a legally disabling condition shown.

Accordingly, the department's action is AFFIRMED.

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

Date Signed: May 27, 2009

Date Mailed: May 28, 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.

MBM/db

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