

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: 2010-16521
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 11, 2010
Hillsdale 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 March 11, 2010. Claimant and his grandmother personally appeared and testified.

ISSUE

Did the department properly determine that claimant is not disabled by Medicaid (MA) 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 24-year-old high school graduate who has a sporadic, unskilled work history (Department Exhibit #1, pg 6).

(2) In September 2009, claimant filed a Social Security disability application (Department Exhibit #1, pg 3).

(3) Claimant's application was denied and he did not appeal that decision.

(4) On November 23, 2009, claimant also filed a disability-based MA/retro-MA application at his local Department of Human Services (DHS) office.

(5) When that application was denied, claimant filed a timely hearing request dated December 4, 2009.

(6) Claimant's hearing was held on March 11, 2010.

(7) Claimant's medical records verify he was hospitalized in August 2009 (8/3/09-8/16/09) due to nearly drowning in a fresh water lake (Department Exhibit #1, pgs 14-62).

(8) Claimant's medical records indicate he has a long-standing seizure disorder; consequently, his hospital doctors speculated he may have had a seizure in August 2009, which led to the drowning episode due to not taking his anti-seizure medication as prescribed (Department Exhibit #1, pgs 10 and 51).

(9) While hospitalized, claimant was restarted on his medication (██████████), and he reports compliance with taking it since then.

(10) Claimant believes his memory has been somewhat worse since the drowning episode, but a post-hospitalization progress report dated August 25, 2009 notes no neurological deficits (Department Exhibit #2).

(11) As of claimant's March 11, 2010 hearing date (7 months post-hospitalization), his only other prescription medication was a blood pressure regulator (██████████)(Department Exhibit #1, pg 6).

(12) Claimant stated at the hearing he has continued to actively seek employment, but the poor economy coupled with his juvenile offense record has made it difficult for him to find work and/or to remain employed.

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).

Jurisdiction must be established for a contested case review of departmental action before a decision on the merits of the case can be made. The applicable departmental policy states:

Final SSI Disability Determination

SSA's determination that disability or blindness does **not** exist for SSI purposes is **final** for MA if:

- . The determination was made after 1/1/90, **and**
- . No further appeals may be made at SSA, **or**
- . The client failed to file an appeal at any step within SSA's 60-day limit, **and**
- . The client is **not** claiming:
 - .. A totally different disabling condition than the condition SSA based its determination on, **or**
 - .. An additional impairment(s) or change or deterioration in his condition that SSA has **not** made a determination on.

Eligibility for MA based on disability or blindness does **not** exist once SSA's determination is **final**. PEM, Item 260, pp. 2-3.

The relevant federal regulations are found at 42 CFR Part 435. These regulations provide: "An SSA disability determination is binding on an agency until that determination is changed by the SSA." 42 CFR 435.541(a)(2)(b)(i). This regulation also provides: "If the SSA determination is changed, the new determination is also binding on the department." 42 CFR 435.541(a)(2)(b)(ii). These federal mandates are also reflected in the policy item cited above (BEM Item 260).

The evidence of record in this case verifies claimant received a final SSA determination . Claimant is now alleging impairments identical to those the Social Security Administration (SSA) has already reviewed. Consequently, under the above-cited federal regulation and state policy, no jurisdiction exists for this Administrative Law Judge to proceed on the merits of this case. The status quo must remain intact. The department's action must remain upheld. In closing, this Administrative Law Judge notes claimant would not have prevailed on the merits, even if a full analysis was required.

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.

Michigan administers the federal MA program. In assessing eligibility, Michigan defers to the federal guidelines. These federal guidelines state in part:

...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).

... [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).

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).

...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).

[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).

Claimant does not qualify for the MA disability coverage he seeks because he has not established the existence of a medically severe condition, or combination of conditions, which would prevent employability for the necessary, continuous duration required under MA program rules. In short, absolutely nothing in claimant's medial records establishes he is incapable of working in a wide variety of unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. Claimant's biggest barrier to employability appears to be his lack of any recent connection to the competitive workforce. Claimant should be referred to [REDACTED] for assistance with job placement and/or training consistent with his skills, interests and abilities.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the status quo must remain intact based on lack of jurisdiction, or *in arguendo*, for lack of severity 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: March 23, 2010

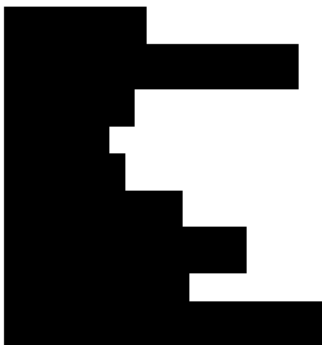
Date Mailed: March 24, 2010

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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