

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: 2010-27176

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 22, 2010

Gladwin 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 April 22, 2010. Claimant personally appeared and testified.

ISSUE

Did the department properly determine 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 divorced, 49-year-old light smoker with a high school diploma and a skilled work history in auto mechanics and CAD/CAM design.

(2) Claimant reported at hearing he left his most recent CAD/CAM engineering job in [REDACTED] in February 2008 due to seizure onset, then he moved back to his home community in [REDACTED]

(3) However, claimant's medical records verify he spent two days in a [REDACTED] [REDACTED] in [REDACTED]) secondary to an overdose of prescription narcotics [REDACTED](Department Exhibit #1, pgs 273-276).

(4) Objective tests were performed during this hospitalization (chest x-rays and a brain CT scan) which revealed no severe cardiac, pulmonary or brain abnormalities (Department Exhibit #1, pgs 277-279).

(5) Five months earlier, in February 2009, claimant underwent EEG, MRI and MRA brain scans in [REDACTED], all of which were normal (Department Exhibit #1, pgs 36-39).

(6) Specifically, claimant's awake EEG produced no evidence of focal epileptiform discharges and his MRI/MRA scans were deemed "unremarkable" (Department Exhibit #1, pgs 36, 38 and 39).

(7) Additionally, a June 2009 physical examination report (one month before disability application filing) indicates claimant was fully oriented x 3 with no gait/range of motion/strength limitations (Department Exhibit #1, pg 31).

(8) Claimant's prophylactic (preventative) anti-seizure medication was switched from [REDACTED] to [REDACTED] at that time (Department Exhibit #1, pg 31).

(9) An independent psychological evaluation conducted in December 2009 (five months after disability application filing) states in relevant part:

It appears at this time that the claimant's difficulty working is more related to his health problems than any mental health difficulties. Although a neurologist would have to confirm his seizure disorder, his mental health disorder is not completely inhibiting his ability to work, as he reported having this for many years, and was able to hold jobs with these symptoms (Department Exhibit #1, pg 27).

(10) Consistent with this opinion, the evaluating psychologist listed claimant's Global Assessment Function (GAF) at 60 (normal); additionally, the medical records submitted to date do not verify a seizure disorder (Department Exhibit #1, pg 27).

(11) Claimant is not engaged in any mental health treatment or counseling and no evidence of severe mental/emotional/cognitive impairments is contained within the medical records submitted to date; however, claimant stated at the hearing his treating doctor has prescribed an antidepressant and an anti-anxiety agent to manage his self reported symptoms.

(12) On July 29, 2009, claimant filed a disability-based MA application in [REDACTED] [REDACTED] (Department Exhibit #1, pgs 3-18)(See also Finding of Fact #2 and #3 above).

(13) When that application was denied claimant filed a hearing request, held April 22, 2010.

(14) Claimant lives alone; he is fully independent in all self cares and basic daily living activities except driving because his reported seizure activity prevents him from operating a motor vehicle safely or returning to CDL-A (certified) long distance trucking, which he reports doing three or four years ago.

(15) Claimant stands approximately 5'10" tall and weighs approximately 180 pounds; he is ambidextrous (uses both hands with equal ease), per self report.

(16) Claimant reported at the hearing he was diagnosed with pneumonia and prescribed outpatient antibiotics during a brief Emergency Room (ER) visit on January 28, 2010.

(17) Claimant also reported his most recent “seizure” occurred that day; however, no medical records about his ER treatment were submitted.

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).

...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).

...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 I relevant part:

A “symptom” is a 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 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 coverage he seeks because he has not presented any objective medical test results or records to establish the presence of a physical or mental condition, or combination of conditions, which could reasonably be expected to prevent employability in any number of unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. In fact, claimant’s medical records demonstrate he is a fully functioning individual of at least average intelligence who lives independently and engages in all basic daily living activities except driving. Consequently, even if claimant’s purportedly uncontrollable seizure activity was documented by the existing medical records (which it is not), claimant would still be unsuccessful in establishing disability status for MA eligibility purposes.

While intermittent seizure activity may make jobs like CDL-A trucking and working around heights and/or factory machinery too dangerous, this condition, standing alone, would not preclude an individual from engaging in a multitude of other unskilled employment. As such, claimant's July 29, 2009 MA application must remain denied in concurrence with the department's State Hearing Review Team (SHRT) decision dated March 30, 2010 (Department Exhibit #2).

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 eligibility standards.

Accordingly, the department's actio is AFFIRMED.

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

Date Signed: May 25, 2010

Date Mailed: May 26, 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.

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MBM/db

cc:

