

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: 2010-28329
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 18, 2010
Lapeer 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 May 18, 2010. Claimant did not appear; however, he was represented by Archie Hayman, a patient advocate from [REDACTED].

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 single, 23-year-old smoker who has two years of post-secondary education and lives with his parents in [REDACTED] (Department Exhibit #1, pgs 5-8).

(2) Claimant lists no gainful employment history, full or part-time (Department Exhibit #1, pg 8).

(3) Claimant has congenital kyphoscoliosis which required spinal surgery in childhood; specifically, at age 14 he underwent left hip surgical fusion via internal rod and screw placement (Department Exhibit #1, pgs 31 and 77).

(4) On September 2, 2009, a third party liability company [REDACTED] filed an MA/retro-MA application on claimant's behalf.

(5) If this application had been approved, the medical expenses associated with claimant's five day hospitalization (7/4/09-7/08/09) would have been covered by MA (Department Exhibit #1, pgs 33-39).

(6) When this application was denied, the third party liability company filed a disability-based MA/retro-MA application on claimant's behalf.

(7) When the department denied claimant's application the third party liability company [REDACTED] filed a hearing request in its capacity as claimant's authorized representative.

(8) Claimant's hearing was held on May 18, 2010.

(9) Claimant did not appear at the hearing and [REDACTED] was unsuccessful in making contact with him prior to the hearing date; consequently, no credible, personal testimony was presented to establish claimant's physical and/or mental condition as applied to the criteria necessary for determining his MA eligibility.

(10) Claimant's July 2009 hospitalization stemmed from an intentional [REDACTED] and [REDACTED] (Department Exhibit #1, pg 31)(See also Finding of Fact #5 above).

(11) At hospital admission, claimant acknowledged he was an ongoing [REDACTED] drinker (3 to 4 times weekly), and that he drinks until he “gets a buzz” (Department Exhibit #1, pgs 31 and 33).

(12) Claimant also indicated he routinely uses [REDACTED] approximately once every two weeks (Department Exhibit #1, pg 31).

(13) During hospitalization, claimant was diagnosed with major depression/suicidal ideation secondary to situation stressors (e.g., no job, sex offender on probation status, low back pain)(Department Exhibit #1, pgs 31, 32, 33 and 35).

(14) On discharge day (7/08/09) claimant stated:

I feel great. The suicidal tendencies and depression have been relieved due to the fact that I have remembered that there’s hope and reasons to live plus medication for the depression. I want to go home today (Department Exhibit #1, pg 38).

(15) During all times relevant to claimant’s disputed MA/retro-MA application he had a Social Security Administration (SSA) disability appeal pending.

(16) On March 26, 2010, the SSA issued a decision subsequent to hearing which concurs with the department’s MA/retro-MA denial based on claimant’s ability to make a successful adjustment to performing work that exists in significant numbers in the national economy (Department Exhibit #2, pgs 1-14).

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).

...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).

...[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.

...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).

[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/retro-MA disability coverage he seeks because neither he nor his authorized representative have established the existence of a medically severe condition, or combination of conditions, which would prevent employability for the necessary, continuous duration required under the above-referenced rules. Claimant had a brief psychiatric

hospitalization. At discharge his mental status was within normal limits. Additionally, claimant did not appear at the hearing to testify as to any residual mental or physical symptoms that might continue due to his diagnosed conditions. Therefore, absolutely nothing in claimant's medical 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. As such, claimant's disputed application must remain denied, in concurrence with the SSA's decision dated March 26, 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 decision is AFFIRMED.

/s/

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

Date Signed: June 1, 2010

Date Mailed: June 2, 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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cc:

