

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

IN THE MATTER:

[REDACTED]

Reg No. 201027684
Issue No. 2009/4031
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: April 21, 2010
Saginaw 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 the claimant's request for a hearing. After due notice, a telephone hearing was held on April 21, 2010. Claimant, his fiancée and his mental health case manager 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 a material fact:

1. Claimant is a divorced, 50-year-old chronic smoker with a limited education (completed 10th grade) and no valid driver's license; he currently lives with his fiancée in [REDACTED] and they are soon expecting their first child.
2. On December 17, 2009, three months after his most recent county jail outdate (9/12/09), claimant applied for disability-based medical coverage (MA) and a monthly cash grant (SDA).

3. When the department denied claimant's application he filed a hearing request.
4. Claimant's hearing was held by conference telephone on April 21, 2010.
5. Claimant testified he has not worked in several years; however, the discharge summary from claimant's most recent voluntary psychiatric admission at [REDACTED] notes he was laid off from a carpentry job (light/medium exertional activity) in May 2009 (Department Exhibit #1, pg 27).
6. Claimant alleges no severe physical impairments, but claims he is mentally disabled secondary to a Bipolar Disorder diagnosis (Client Exhibit A, pgs 2 and 174).
7. Claimant has an extensive polysubstance abuse history; although he testified he had been drug free for "a couple years," his May 2009 urine screen at admission to [REDACTED] was positive for [REDACTED] (Department Exhibit #1, pg 25).
8. Additionally, claimant's May 2009 [REDACTED] discharge summary states in relevant part:

The patient continually throughout his stay would medication seek, he required 3 doses in less than 10 hours of [REDACTED], and [REDACTED]. He was continually asking for pain medication related to his tooth pain, and medication consults were done related to that, antibiotics started. Twice prior to discharge to substance abuse treatment, the patient would report that he had suicidal thoughts, when the day before he did not, but when we agreed to discharge him to [REDACTED] at that time his suicidal thoughts subsided (Department Exhibit #1,pg 27).

9. Similarly, during claimant's outpatient community mental health assessment on September 17, 2009, he reported his choice of drug was pot, and his most recent use was two months earlier (Department Exhibit #1, pg 64).
10. Claimant requested an extension of the hearing record to submit additional psychological evidence which confirms another brief

psychiatric hospital admission in August 2009 directly from jail (Client Exhibit A, pg 177)(See also Finding of Fact #2 above).

11. This August 2009 involuntary admission resulted upon medical recommendation because claimant was refusing to take his psychotropic medications as prescribed, and also, he was reporting hearing voices (psychotic features) as well as having suicidal thoughts and severe depression at that time (Client Exhibit A, pgs 168-169, 177 and 304-307).
12. As of claimant's April 21, 2010 hearing date, he was involved in consistent outpatient mental services; additionally, [REDACTED], [REDACTED] were being prescribed for symptom management.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 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.

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.

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).

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).

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).

In addition, when we evaluate the severity of mental impairments for adults (persons age 18 and over), we must follow a special technique at each level in the administrative review process. 20 CFR 416.920a(a).

Under the special technique, we must first evaluate your pertinent symptoms, signs, and laboratory findings to determine whether you have a medically determinable mental impairment(s). 20 CFR 416.920a(b).

We must then rate the degree of functional limitation resulting from the impairment(s) in accordance with paragraph (c) of this section and record our findings as set out in paragraph (e) of this section. 20 CFR 416.920a(b).

We have identified four broad functional areas in which we will rate the degree of your functional limitation: activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation. 20 CFR 416.920a(c).

...Activities of daily living including adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephones and directories, using a post office, etc. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

...**Social functioning** refers to an individual's capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

...**Concentration, persistence or pace** refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Episodes of decompensation are exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning, as manifested by difficulties in performing activities of daily living, maintaining social relationships, or maintaining concentration, persistence, or pace. 20 CFR 404, Subpart P, App. 1, 12.00(C)(4).

After we rate the degree of functional limitation resulting from the impairment(s), we will determine the severity of your mental impairment(s). 20 CFR 416.920a(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).

The psychological, psychiatric and psychosocial evidence of record establishes claimant has been diagnosed as Bipolar, but that condition has been shown responsive to psychotropic medications as long as claimant maintains compliance.

Furthermore, claimant has no severe physical impairments which would limit his ability to maintain employment. Additionally, despite his Bipolar diagnosis, he is fully independent in activities of daily living including all self cares and navigation of the public bus system since he has no driver's license, as well as spending time with his children/grandchildren. In fact, an independent psychological evaluation conducted in January 2010 found claimant to be fully oriented with no intellectual deficits who retains the ability to perform at least simple, routine and repetitive tangible work tasks, although he was noted to have poor self esteem, limited insight and a low motivational level (Department Exhibit #1, pgs 8-12). This evaluation also notes claimant's current medications are managing his

symptoms well. As such, the medical evidence submitted to date fails to establish any physical or mental impairments of the severity necessary to qualify for the disability assistance he seeks. Consequently, claimant's disputed application must remain denied.

Claimant's biggest barrier to employability appears to be his lack of recent connection to the competitive workforce. Claimant should be referred to [REDACTED] [REDACTED] for training consistent with his interests, skills and abilities.

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 December 17, 2009 MA/SDA application, based on a finding he lacks a legally disabling condition.

Accordingly, the department's action is AFFIRMED.

/S/
Marlene B. Magyar
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: October 7, 2010

Date Mailed: October 7, 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:

