

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: 2010-30649
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 11, 2010
Kalamazoo 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 May 11, 2010. Claimant and his mental health counselor 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 as material fact:

(1) Claimant is a divorced, 40-year-old high school graduate with two years of post-secondary education ([REDACTED]) who lives alone in [REDACTED] (Department Exhibit #1, pgs 56 and 100).

(2) On April 1, 2010, the department received claimant's hearing request protesting the denials of his February 18, 2010 and March 1, 2010 disability-based MA/SDA applications.

(3) Claimant's hearing was held by conference telephone on May 11, 2010.

(4) Claimant alleged no severe physical impairments at the hearing and none are evidenced by the medical records submitted to date (Department Exhibit #1, pgs 1-162).

(5) Claimant stands 5'10" tall and weighs 190 pounds; he is right hand dominant, per self report (Department Exhibit #1, pgs 48 and 56).

(6) Claimant is fully independent in self cares and basic daily living activities; additionally, he has a valid driver's license and a roadworthy vehicle (Department Exhibit #1, pgs 17, 39-40, 48 and 126-129).

(7) Claimant has a history positive for significant alcohol abuse (Department Exhibit #1, pgs 63 and 65).

(8) Claimant spent three days in the hospital in December 2009 (12/5/09-12/07/09) secondary to an alcoholic binge drinking episode which triggered an alcohol-related seizure; his ethanol level was .24 at admission (Department Exhibit #1, pg 8 and 63-67).

(9) All tests and procedures done during this hospitalization were within normal limits but mild esophagitis was noted; consequently, claimant now uses [REDACTED] for symptom management, per self report (Department Exhibit #1, pgs 68 and 69).

(10) Claimant also reports he has been in full remission from alcohol abuse since his December 2009 hospitalization and no further seizure activity has occurred.

(11) Claimant has a sporadic, unskilled work history which includes various temporary service agency jobs since 2000 (Department Exhibit #1, pgs 58-61 and 100; Department Exhibit #2, pgs. 1-13).

(12) Claimant has a longstanding Bipolar diagnosis with two remote psychiatric hospitalizations for exacerbation of symptoms, as reported at hearing.

(13) Aside from the [REDACTED] referenced in Finding of Fact #9 above, claimant's only other prescription medications at all times relevant to his disputed disability applications have been (and still are) 200 mgs of prophylactic anticonvulsant daily ([REDACTED]) and 1 mg of [REDACTED] at bedtime daily as a sleep aid.

(14) A medication review dated February 19, 2009, indicates claimant's affect was bright, his thought processes were logical and goal-directed, his reality testing was intact and he was appropriately clean/dressed; a three month follow-up appointment was recommended (Department Exhibit #1, pgs 131-134).

(15) Additionally, claimant has been engaged in private, outpatient counseling for five years with an individual who possesses a Masters Degree in Psychology.

(16) This counselor opined at hearing claimant is incapable of any type of substantial gainful work activity secondary to "rapid cycling" Bipolarism and a generalized Anxiety Disorder.

(17) After review of the medical records submitted to date, the department's State Hearing Review Team (SHRT) issued a prehearing opinion finding claimant's records failed to document any mental or physical impairment that would significantly limit his ability to perform basic work activities (Department Exhibit #3).

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).

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.

...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).

...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).

...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/SDA 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 durations required under the above-referenced rules.

Claimant's mental health status is within normal limits. At his last documented review, his bipolar disorder was noted to be stable as long as medication compliance was maintained. Furthermore, claimant is a fully functioning individual of at least normal intelligence with no physical impairments. 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, this Administrative Law Judge concurs with the department's SHRT decision dated April 20, 2010

(See Finding of Fact #17 above). Consequently, claimant's disputed applications must remain denied.

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 February 18, 2010 and March 1, 2010 MA/retro-MA/SDA applications because he is not disabled by the governing MA/SDA eligibility standards.

Accordingly, the department's denial actions are AFFIRMED.

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

Date Signed: May 19, 2010

Date Mailed: May 20, 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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