

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: 2010-31346

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 13, 2010

Genesee 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 13, 2010. Claimant 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, 32-year-old high school graduate currently pursuing Distributory Logistics/Freight Brokery certification at [REDACTED], although he opted to take only one class this spring semester.

(2) Claimant lives alone and needs no assistance with self cares (bathing, dressing, feeding); additionally, he has a valid driver's license and access to a roadworthy vehicle which he is fully capable of driving.

(3) On February 1, 2010, claimant applied for a disability-based monthly cash grant (SDA) and medical insurance (MA) because he has no job, having not worked in his most recent occupation as a CDL-A long distance trucker since December 2008.

(4) When the department denied claimant's disability application he requested a hearing, held May 13, 2010.

(5) Claimant stated at hearing he also worked as a loan officer/mortgage officer and trained new employees in that capacity for several years until he decided to take up long distance trucking in 2004 (See also Finding of Fact #3 above).

(6) Claimant alleges he is disabled secondary to self reported back pain and Schizoaffective Disorder first diagnosed in August 2009 during a week-long stay at [REDACTED] [REDACTED]).

(7) Following claimant's in-patient treatment he immediately affiliated with [REDACTED] [REDACTED]), where he has been assisted in life management skills (i.e., necessary paperwork, appointment scheduling, school class scheduling, etc.) by his case manager who possesses a Bachelors Degree in Social Work.

(8) Claimant's case manager testified she is considering referring him to outpatient counseling due to her perception of severe emotional impairments, but she admitted he is intelligent, articulate and doing very well in his college course work.

(9) Claimant stands 5'10" tall and is medically obese at 270 pounds (BMI=38.7); weight loss has been medically recommended.

(10) Claimant has been diagnosed with high blood pressure and high cholesterol not uncommon in obese patients; consequently, the standard control medications have been prescribed ([REDACTED])(Department Exhibit #1, pg 91 and Client Exhibit A).

(11) A March 25, 2010 residual functional capacity assessment finds no severe physical abnormalities exist in claimant's case and indicates his low back pain complaints are not fully credible, summarizing as follows:

The medical findings do not support severe complications resulting from his hypertension or back complaints. [Claimant] does not have restrictions in range of motion nor does he require the use of any ambulatory aid (Department Exhibit #2, pgs 1-9).

(12) Likewise, the independent psychologist who examined claimant on February 23, 2010 expressed similar concerns about his veracity:

Because of my suspicion that [claimant] was exaggerating symptoms at times, I administered the Structured Inventory of Malingered Symptomatology. [Claimant's] SIMS score of 36 was significantly elevated above the recommended cutoff score (14) for the identification of suspected malingering. This individual endorsed a high frequency of symptoms that are highly atypical in patients with genuine psychiatric or cognitive disorders (Department Exhibit #2, pg 40).

(13) A mental residual functional capacity assessment completed by claimant's [REDACTED] [REDACTED] psychologist four months earlier (10/16/09) is consistent with the independent psychologist's opinion, finding claimant not significantly limited or only moderately limited in the four areas of mental functioning required to be assessed during the disability determination process (Department Exhibit #1, pgs 71 and 72; Department Exhibit #2, pgs 37-41 and 71-72).

(14) As of claimant's hearing date (5/13/10) no medications were being prescribed for claimant's self reported back pain and his most recent medication list (5/11/10) indicates he was

not compliant in taking the [REDACTED] prescribed by [REDACTED] for management of his schizoaffective symptoms (Client Exhibit A).

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).

Additionally, Social Security Ruling 96-4p (SSR 96-4p) states in relevant part:

A “symptom” is not a “medically determinable physical or mental impairment” and no symptom by itself can establish the existence of such impairment. In the absence of a showing that 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.

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).

...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 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).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

Furthermore, claimant's malingering scores on testing administered during his October 2009 psychological evaluation, as well as the doctor's opinion after claimant's March 2010 physical assessment, strongly support a finding claimant's reported symptoms are likely highly inflated for secondary gain (a disability allowance). Thus, this Administrative Law Judge seriously questions claimant's veracity and gives little weight to his subjective testimony in this regard. As such, claimant's disputed MA/SDA application must remain denied based on lack of severity shown.

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/SDA eligibility standards.

Accordingly, the department's action 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:

