

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

IN THE MATTER:

[REDACTED]

Reg No. 201036291
Issue No. 2009
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: October 12, 2010
Oakland 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 October 12, 2010. Claimant and his mental health case manager personally appeared and testified.

ISSUE

Did the department properly determine claimant is not disabled by Medicaid/retro-MA 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 54-year-old high school graduate with a valid driver's license (but no vehicle) who resides with his long-term partner and their adult son in [REDACTED]
2. Claimant has a Schizoaffective Disorder diagnosis (25+ years ago) with intermittent suicidal ideation/depressive flare-ups requiring periodic hospitalizations for observation/stabilization.
3. Claimant was hospitalized at [REDACTED] between October 19, 2006 and October 27, 2006, according to his medical records, and his [REDACTED] case manager testified claimant also

was hospitalized for the same reason within the past year (Department Exhibit #1,pg 5).

4. Claimant has been a long-term participant in outpatient counseling through the [REDACTED].
5. On January 11, 2010, claimant applied for disability-based MA/retro-MA.
6. When that application was denied claimant requested a hearing, held by telephone conference on October 12, 2010.
7. Claimant currently works as a janitor 15 to 20 hours per week; he has been employed in this capacity since at least March 2010, and prior to that he briefly worked hanging drywall (7/1/09-7/31/09) (Department Exhibit #1, pg 6).
8. Claimant shares in basic household chores like laundry, yard work, shopping, etc., and he is fully oriented according to his annual psychiatric evaluation from [REDACTED]; additionally, his Global Assessment Function (GAF) was 60 at that time (Department Exhibit#1, pgs 10 and 13-14).
9. Claimant stipulated on the record at hearing he has no physical impairments which would prevent him from working, which is consistent with the representations he made during his annual psychiatric evaluation in January 2010 (Department Exhibit #1, pg 13)(See also Finding of Fact #7 above).
10. [REDACTED] currently monitors the only two psychotropic medications claimant currently takes, those being a [REDACTED] dosage of [REDACTED] every two weeks and [REDACTED] daily for symptom management.
11. Claimant's mental health case manager acknowledged the [REDACTED] helps with claimant's demeaning/negative auditory hallucinations and with his suicidal ideation (See also Finding of Fact #3 above).

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).

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

This means an applicant must be completely unable to do any type of work because of a medically determined physical or mental impairment lasting continuously for at least 12 months, or because he/she has a diagnosed terminal illness.

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.

Furthermore, it must be noted the law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. This Administrative Law Judge finds claimant's current psychotropic medications are sufficient to adequately manage his reported symptoms to the point where he is fully capable of engaging in full time janitorial work of the type he currently performs part-time.

This finding is supported not only by claimant's testimony at hearing, but also by the fact there is no objective psychological, psychiatric or psychosocial evidence to support a contrary finding, including claimant's most recent annual evaluation from [REDACTED] completed in January 2010. More specifically, the governing regulations state:

...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).

...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.

Psychiatric signs are medically demonstrable phenomena that indicate specific psychological abnormalities, e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception, as described by an appropriate medical source. 20 CFR, Part 404, Subpart P, App. 1, 12.00(B).

Symptoms and signs generally cluster together to constitute recognizable mental disorders described in the listings. The symptoms and signs may be intermittent or continuous depending on the nature of the disorder. 20 CFR, Part 404, Subpart P, App. 1, 12.00(B).

We measure severity according to the functional limitations imposed by your medically determinable mental impairment(s). We assess functional limitations using the four criteria in paragraph B of the listings: activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation. 20 CFR, Part 404, Subpart P, App. 1, 12.00(B).

...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).

Claimant does not qualify for the medical coverage he seeks because he has not submitted any medical records to establish the presence of a disabling mental disorder. In fact, based on the medical records submitted, this Administrative Law Judge finds claimant is fully capable of working in a wide variety of simple, 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 State Hearing Review Team (SHRT) decision dated June 7, 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 denied claimant's January 11, 2010 MA/retro-MA application.

Accordingly, the department's action is AFFIRMED.

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

Date Signed: November 10, 2010

Date Mailed: November 12, 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.

MBM/db

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