

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

IN THE MATTER OF:

[REDACTED]

Reg No. 201052694
Issue No. 2009; 4031
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: October 7, 2010
St. Clair 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 7, 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 a material fact:

1. Claimant is a 51-year-old male with two years of post-secondary education who lives independently in St. Clair County, Michigan; however, he does not have a valid driver's license so he walks, rides his bicycle or takes the bus wherever he needs to go.
2. Claimant is a recidivist felon; his most recent incarceration out-date was [REDACTED].
3. On June 28, 2010, claimant applied for a disability-based cash grant and medical assistance (MA/SDA).

4. When claimant's application was denied he filed a hearing request, held by conference telephone on October 7, 2010.
5. Claimant stands approximately 5' 9" tall and weighs approximately 185 pounds; he is right hand dominant, per self report.
6. Claimant has a semi-skilled work history as a licensed insurance agent in his father's business but he has not done that since 2001; he reported at hearing his agent's license was revoked secondary to a felony conviction (Department Exhibit 1, pg. 175).
7. Claimant has an extensive substance abuse history (alcohol/cocaine/marijuana).
8. Claimant testified at the hearing on October 7, 2010, he has been in full remission for 20 years; however, an MDOC psychiatric evaluation dated [REDACTED] notes claimant was using cocaine occasionally throughout those years, with a self-report of stopping use on March 19, 2009, per his [REDACTED] mental status examination (Department Exhibit 1, pgs. 82 and 194).
9. Claimant has no physical impairments; his disability allegation is based solely on mental impairments.
10. Claimant testified at the hearing on October 7, 2010, he has a poor memory, lacks concentration, gets confused easily, fears people (social isolation) and doesn't sleep well (insomnia).
11. Claimant's diagnoses as of [REDACTED] were: 1) Bipolar Disorder NOS; 2) Antisocial Personality Disorder; and 3) Polysubstance Dependence (Department Exhibit 1, pg. 256).
12. Claimant testified at the hearing he has been regularly attending out-patient [REDACTED] counseling, and also, he attends group sessions designed to maintain stability and substance abuse remission.
13. Additionally, claimant's prescribed psychotropic mood stabilizers were: 1) Klonopin; 2) Carbamazepine (trade name: Tegretol); 3) Trazadone; 4) Prozac; and 5) Lithium.
14. On September 14, 2010, the department's State Hearing Review Team (SHRT) doctors recommended continuation of claimant's MA/retro-MA/SDA disability disallowance based on materiality of drug/alcohol abuse, in combination with his residual functional capacity to perform simple,

unskilled work despite his diagnoses (Department Exhibit 2) (See also Finding of Fact #11 above).

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.

When determining whether an individual is legally disabled, 20 CFR 416.920 requires the trier-of-fact to follow a 5-step, sequential evaluation process by which current work

activity, the severity of the impairment(s), residual functional capacity and vocational factors like age, education and past work experience are assessed, in that order. If disability can be ruled out at any step, analysis of the next step is not required.

First, the trier-of-fact must determine if the individual is working, and if so, whether that work constitutes substantial gainful activity. 20 CFR 416.920(b). In this case, claimant has not been substantially gainfully employed since 2007 when he got fired; consequently, the analysis must continue. However, it must be noted claimant's exit from the competitive workforce in 2007 was not in any way related to his allegedly disabling condition. Therefore, it does not establish onset, severity or durational factors necessary for a disability allowance.

Furthermore, the current federal regulations are clear. Drug addiction and/or alcoholism disqualifies an applicant from disability benefits if those conditions are a material, contributing factor to his or her inability to engage in substantial work activity. Put simply, federal law no longer permits a finding of disability for those persons whose primary impairment is substance abuse/dependency (PL 104-121).

"Material to the determination" means that, if the applicant stopped using drugs and/or alcohol, his or her remaining limitations would not be disabling. This Administrative Law Judge finds consistent, long term abstinence from substance abuse, in combination with adherence to claimant's prescribed medication schedule, would significantly decrease his self-reported symptoms to the point where he would be fully capable of maintaining a wide variety of simple, unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. Consequently, this Administrative Law Judge concurs with the SHRT decision dated September 14, 2010. Claimant does not qualify for disability-based assistance. As such, his disputed MA/retro-MA/SDA application 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 disputed application because he does not meet the criteria necessary for approval.

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: November 29, 2010

Date Mailed: November 29, 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 mailing 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 / vc

cc:

