

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. 201093  
Issue No. 2009/4031  
Case No. [REDACTED]  
Load No. [REDACTED]  
Hearing Date: November 5, 2009  
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 November 5, 2009. 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 40-year-old high school graduate without a valid driver's license secondary to numerous DUI convictions who resides in a one-story rental house with a female roommate in [REDACTED].
2. Claimant has an extensive legal history including state/county incarcerations; he was last released from boot camp on November 18, 2008, per his hearing testimony.
3. Two months later, in January 2009, claimant initiated out-patient [REDACTED] counseling to deal with depression and suicidal urges, per his hearing testimony.

4. On March 24, 2009, claimant applied for disability-based medical coverage (MA) and a monthly cash grant (SDA) alleging both physical and mental problems render him completely incapable of engaging in any type of substantial gainful work activity.
5. When the department denied that application claimant filed a hearing request, held by conference telephone on November 5, 2009.
6. As of the hearing date, claimant was attending [REDACTED] regularly, and also, he was involved in [REDACTED].
7. At hearing, claimant testified he had been in full remission from alcohol use since 2007; however, during a February 16, 2009 psychiatric evaluation at [REDACTED], claimant said he last used alcohol on March 21, 2008 (Department Exhibit #1, pgs 23 and 24).
8. This evaluation also notes claimant was not taking any prescription medications at that time (2/09); however, by the disability hearing date (11/09) claimant's supporting witness from [REDACTED] verified he started taking two antidepressants, T [REDACTED] and generic [REDACTED] (aka [REDACTED]) for symptom management in addition to every other week outpatient counseling sessions at CMH.
9. During claimant's February 2009 psychiatric evaluation (one month prior to MA/SDA application filing), he exhibited fluid, coherent, spontaneous speech with good eye contact and no evidence of disorientation, hallucinations, delusional thinking or suicidal/homicidal ideation; he was neatly dressed, had good personal hygiene and a normal gait with independent ambulation (no need for assistive device demonstrated)(Department Exhibit #1, pgs 23 and 24).
10. The examining psychiatrist acknowledged claimant's sad affect and generally depressed mood; consequently the antidepressants listed in Finding of Fact #8 were initiated at that time (Department Exhibit #1, pg 22).
11. At claimant's hearing, he requested a record extension to provide updated medical evidence regarding treatment of his lower extremity impairment.

12. Claimant's old medical records verify internal left knee derangement which required outpatient drainage, debridement and irrigation successfully performed without complications at [REDACTED] on May 7, 2009 (Department Exhibit #1, pgs 41 and 42).
13. However, in October 2009, claimant's updated medical records verify he underwent a second outpatient procedure to repair a left cruciate ligament rupture with scar build-up (Client Exhibit A, pgs 1 and 2).
14. As of claimant's hearing date, he was still reporting intolerable, debilitating left knee pain despite daily use of prescribed narcotic pain mediations (Lortab/Ultram) and crutches.
15. Claimant has a medium exertional work history in unskilled factory jobs; however, he has not been employed anywhere since 2007, per self report (Department Exhibit #1, pg 31).

### **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).

#### **Basic 14**

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).

"Disability" is:

...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.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...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).

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).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements

and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

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).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

Claimant is not disqualified from receiving MA/SDA at Step 1, because he has not been gainfully employed in several years (See Finding of Fact #15 above).

At Step 2, claimant's diagnosed impairments have left him with some pain, range-of-motion limitations and depressive symptoms. However, it must be noted all these impairments appear capable of adequate symptom management with current prescription medications, despite his inflated complaints to the contrary at hearing.

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. Nevertheless, claimant's medically managed conditions meet the *de minimus* level of severity and duration required for further analysis.

At Step 3, the medical evidence on this record does not support a finding that claimant's diagnosed impairments, standing alone or combined, are severe enough to meet or equal any specifically listed impairments; consequently, the analysis must continue.

At Step 4, the record supports claimant's contention he is incapable of returning to medium exertional level work in factories, as that type of job requires extensive standing, walking, bending, carrying, etc. which might exacerbate claimant's pain levels and/or cause additional injury. As such, this analysis must continue.

At Step 5, an applicant's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. Claimant is a younger individual with a high school education and an unskilled work history. Consequently, at Step 5, this Administrative Law Judge finds, from the medical evidence of record, that claimant retains the residual functional capacity to perform at least sedentary work as that term is defined above. As such, claimant's disputed application must remain denied.

Claimant's biggest barriers to employability appear to be his felony record in combination with his lack of recent connection to the competitive workforce. Claimant should be referred to [REDACTED] for assistance with job training and/or placement consistent with his skills, interests and abilities.

### **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 Duane Berger, Acting Director  
Department of Human Services

Date Signed: January 14, 2011

Date Mailed: January 18, 2011

**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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