

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: 2007-15136
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 28, 2007
Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Jay W. Sexton

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 August 28, 2007 in Kalamazoo. Claimant personally appeared and testified under oath.

The department was represented by Sue Lang (ES).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical reports to SHRT. Claimant waived the timeliness requirement. Claimant failed to submit new medical reports by the Record Close Date.

ISSUE

(1) Did the department establish medical improvement to the extent that claimant is now able to work and no eligible for MA-P?

(2) Did the department establish medical improvement to the extent that claimant is now able to work and no eligible for SDA?

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 MA-P//SDA recipient. Claimant's case was approved based on a frostbite injury which claimant received to both of his feet. On review (March 2007) claimant's case was reviewed and denied by MRT and SHRT due to medical improvement. SHRT relied on Med-Voc Rule 202.20 as a guide.

(2) Claimant's vocational factors are: age—50; education—9th grade; post high school education—GED and course work at [REDACTED] (no degree); work experience—worked at temp agencies doing manual labor.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2006, when he was employed by a temp agency doing manual labor.

(4) Claimant has the following unable-to-work complaints:

- (a) Frostbite to both feet;
- (b) Nerve damage to both feet;
- (c) High blood pressure;
- (d) Deformed feet due to prior surgery.

(5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (July 12, 2007):

In 2/2006, claimant sustained frostbite to both feet, primarily in his toes, which developed gangrene (Pages 61-62; 50). In 3/2006, he was seen by a vascular surgeon who noted necrotic (dead) tissue of some of the toes, mostly on the left side. He performed a debridement of the dead tissue and treated the gangrene conservatively. The claimant's blood pressure was 140/86 (Pages 50-52). On 4/2006 his blood pressure was 142/94. In 9/2006, the

vascular surgeon noted improvement and healing of the tissue (Page 24). In 11/2006, he continued to have some tingling/numbness of his toes, but his overall condition was improving, although he did have some continued discoloration of his left great toe (Page 23). In 2/2007, he was doing well with almost complete healing of the toes. His blood pressure was 144/84 (Page 20).

ANALYSIS: His condition improved and would not preclude light work.

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning and laundry.

(7) . Claimant lives with his sister. Claimant does not have a valid driver's license. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) An April 11, 2006 medical examination report (DHS-49) was reviewed. The physician provided the following diagnosis: Bilateral gangrenous feet from frostbite.

The physician provided the following limitations: May lift less than 10 pounds occasionally, can stand less than 2 hours in an eight-hour day. May need to use a cane. No limitations on his hands/arms. Unable to use his feet for operation of foot controls.

(9) The probative medical evidence does not establish an acute mental condition that is expected to prevent claimant from performing customary work functions for the required period of time. There is no medical evidence of a mental impairment in this record.

(10) The probative medical evidence does establish an acute physical condition expected to prevent claimant from performing all customary work functions for the required period of time. Claimant has an ongoing frostbite condition in both feet which has not

completely resolved. Claimant continues to experience tingling and numbness in his feet. He has difficulty walking. He still has gangrene in his toes.

(11) Claimant's most prominent complaint is his foot pain and foot dysfunction secondary to frostbite.

(12) Claimant recently applied for Federal disability benefits. His application is pending.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to a continuation of his MA-P/SDA based on impairments listed in paragraph #4 above.

The medical records provided by claimant verify the following physical diagnosis: Frostbite and necrosis.

DEPARTMENT'S POSITION

The department thinks that the claimant's condition has improved to the point that he is now able to perform unskilled, light work.

LEGAL BASIS

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).

The department has the burden of proof to show by a preponderance of the medical evidence in the record that claimant's physical/mental impairments have improved to the point that he is now able to perform substantial gainful activity.

ABILITY TO DO SUBSTANTIAL GAINFUL ACTIVITY

Under MA-P/SDA policy, the department has the burden of proof to establish that claimant's impairments have improved to the point that claimant is now medically able to return to work. PEM 260 and 261.

The medical evidence in the record establishes that claimant has still not completely recovered from his frostbite injuries to both feet.

Even though claimant has had extensive rehabilitation, he still has numbness and tingling in his feet with pain. He still has gangrene in his toes. Claimant also has high blood pressure, which has not been resolved.

Because of claimant's bilateral foot dysfunction, he is not able to walk confidently and must use a cane.

The medical/vocational evidence of record, in combination with claimant's testimony, establish that claimant has ongoing impairments arising out of his bilateral frostbite injuries which prevent him from performing substantial gainful activity.

Based on a careful review of the entire record, the Administrative Law Judge concludes that the department incorrectly decided to cancel claimant's MA-P/SDA due to medical improvement. Based on this analysis, the Administrative Law Judge concludes that claimant has not improved medically to the extent that he is now able to perform substantial gainful activity in the workplace.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not established the requisite medical improvement to support denial of claimant's MA-P/SDA benefits under PEM 260 and 261.

Accordingly, the department's action to close claimant's MA-P/SDA based on medical improvement is, hereby, REVERSED.

SO ORDERED.

/s/ _____
Jay W. Sexton
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: August 3, 2009

Date Mailed: August 4, 2009

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:

