

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: 2007-16958

Issue No: 4031; 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 6, 2007

Van Buren County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

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 June 6, 2007.

ISSUE

Whether the Department of Human Services (department) properly determined that claimant has not established disability for purposes of Medical Assistance (MA) and State Disability Assistance (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) During December 2006, claimant was a recipient of MA and SDA. Claimant's assistance was due for medical review. Claimant submitted updated medical records for department consideration.

(2) December 19, 2007, the Medical Review Team denied claimant's medical review. Department Exhibit (department) A.

(3) February 23, 2007, the department sent claimant written notice that MA and SDA would terminate.

(4) March 5, 2007, the department received claimant's timely request for hearing. Department's negative action was deleted pending hearing.

(5) May 7, 2007, the State Hearing Review Team (SHRT) denied claimant's medical review. Department B.

(6) June 6, 2007, the telephone hearing was held. Prior to the close of the record, the claimant requested the record be left open for additional medical records. Claimant waived the right to a timely hearing decision. No additional medical evidence was received and the record closed.

(7) Claimant asserts disability based on impairments caused by cervical fusion, laminectomy, pain, numbness, and nerve damage.

(8) Claimant testified at hearing. Claimant is 32 years old, 5' 10" tall, and weighs 195 pounds. Claimant completed high school and 4 years of college, but is a few credits short of a bachelor degree. Claimant is able to read, write and perform basic math. Claimant is able to care for his needs at home. Claimant has a driver's license and is able to drive. He is independent in activities of daily living.

(9) Claimant's past relevant employment has been as a hockey coach, hockey player, and doing road work.

(10) At last positive decision in December 2006, claimant was diagnosed with C5-C6 spondylolysis with right neural foraminal stenosis and right C6 radiculopathy.

March 30, 2006, he underwent anterior cervical discectomy, fusion and plating.

May 8, 2006, Claimant's neurosurgeon asserted that claimant was 5 weeks post surgery; claimant was recovering well; he would need physical therapy. Department A, pages 85-87

(11) At review, claimant continued to suffer intractable pain after his initial surgery and showed symptoms of disc collapse and spurring. September 6, 2006, claimant underwent posterior laminectomy and posterior instrumentation with lateral mass screws and rods. Department A, pages 12-13. October 6, 2006, claimant's neurologist indicated he was improving after having "very rough post-operative course with neck pain". Claimant had normal strength in his arms and hands. There was no muscle wasting and muscle tone was normal. Sensation to light touch was intact. Reflexes were 2+ in upper and lower extremities. Claimant was scheduled for physical therapy. Department A, page 4.

(12) At review, claimant applied for Social Security disability benefits (RSDI) and was denied. Claimant did not appeal the decision.

(13) When comparing the objective medical evidence at review with the objective medical evidence provided at last positive decision, it appears that medical improvement of claimant's physical condition has occurred or that claimant was not disabled. At last positive decision, claimant was recovering from cervical surgery and required physical therapy. He continued to have pain symptoms after surgery. At review, claimant has had a second surgery that resolved his symptoms. In October 2006, his neurosurgeon indicated he would be scheduled for physical therapy and had normal

muscle tone, sensation, and reflexes. At review, claimant was denied RSDI and did not appeal the decision.

(14) Claimant's medical improvement is related to his ability to work.

(15) Claimant is capable of performing at least sedentary work activities.

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; MSA 16.490(15). 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

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).

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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to

tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

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).

Medical improvement. Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with your impairment(s).... 20 CFR 416.994(b)(1)(i).

Medical improvement not related to ability to do work. Medical improvement is not related to your ability to work if there has been a decrease in the severity of the impairment(s) as defined in paragraph (b)(1)(i) of this section, present at the time of the most recent favorable medical decision, but no increase in your functional capacity to do basic work activities as defined in paragraph (b)(1)(iv) of this section. If there has been any medical improvement in your impairment(s), but it is not related to your ability to do work and none of the exceptions applies, your benefits will be continued.... 20 CFR 416.994(b)(1)(ii).

Medical improvement that is related to ability to do work. Medical improvement is related to your ability to work if there has been a decrease in the severity, as defined in paragraph (b)(1)(i) of this section, of the impairment(s) present at the time of the most recent favorable medical

decision **and** an increase in your functional capacity to do basic work activities as discussed in paragraph (b)(1)(iv) of this section. A determination that medical improvement related to your ability to do work has occurred does not, necessarily, mean that your disability will be found to have ended unless it is also shown that you are currently able to engage in substantial gainful activity as discussed in paragraph (b)(1)(v) of this section.... 20 CFR 416.994(b)(1)(iii).

Functional capacity to do basic work activities. Under the law, disability is defined, in part, as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment(s).... 20 CFR 416.994(b)(1)(iv).

...A decrease in the severity of an impairment as measured by changes (improvement) in symptoms, signs or laboratory findings can, if great enough, result in an increase in the functional capacity to do work activities.... 20 CFR 416.994(b)(1)(iv)(A).

When new evidence showing a change in signs, symptoms and laboratory findings establishes that both medical improvement has occurred and your functional capacity to perform basic work activities, or residual functional capacity, has increased, we say that medical improvement which is related to your ability to do work has occurred. A residual functional capacity assessment is also used to determine whether you can engage in substantial gainful activity and, thus, whether you continue to be disabled.... 20 CFR 416.994(b)(1)(iv)(A).

...Point of comparison. For purposes of determining whether medical improvement has occurred, we will compare the current medical severity of that impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled to the medical severity of that impairment(s) at that time.... 20 CFR 416.994(b)(1)(vii).

...If medical improvement has occurred, we will compare your current functional capacity to do basic work activities (i.e., your residual functional capacity) based on the previously existing impairments with your prior residual functional capacity in order to determine whether the

medical improvement is related to your ability to do work. The most recent favorable medical decision is the latest decision involving a consideration of the medical evidence and the issue of whether you were disabled or continued to be disabled which became final. 20 CFR 416.994(b)(1)(vi).

...Medical improvement. Medical improvement is any decrease in the medical severity of impairment(s) present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled and is determined by a comparison of prior and current medical evidence which must show that there have been changes (improvement) in the symptoms, signs or laboratory findings associated with that impairment(s). 20 CFR 416.994(b)(2)(i).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2001 PA 82. The Family Independence Agency (FIA or agency) administers the SDA program pursuant to MCL 400.10, et seq., and MAC R 400.3151-400.3180. Agency policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

- (a) A recipient of supplemental security income, social security or medical assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal SSI disability standards,

except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

- (c) A resident of an adult foster care facility, a home for the aged, a county infirmary, or a substance abuse treatment center.
 - (d) A person receiving 30-day post-residential substance abuse treatment.
 - (e) A person diagnosed as having acquired immunodeficiency syndrome.
 - (f) A person receiving special education services through the local intermediate school district.
 - (g) A caretaker of a disabled person as defined in subdivision (a), (b), (e), or (f) above.
- (2) Applicants for and recipients of the state disability assistance program shall be considered needy if they:
- (a) Meet the same asset test as is applied to applicants for the family independence program.
 - (b) Have a monthly budgetable income that is less than the payment standard.
- (3) Except for a person described in subsection (1)(c) or (d), a person is not disabled for purposes of this section if his or her drug addiction or alcoholism is a contributing factor material to the determination of disability. 'Material to the determination of disability' means that, if the person stopped using drugs or alcohol, his or her remaining physical or mental limitations would not be disabling. If his or her remaining physical or mental limitations would be disabling, then the drug addiction or alcoholism is not material to the determination of disability and the person may receive state disability assistance. Such a person must actively participate in a substance abuse treatment program, and the assistance must be paid to a third party or through vendor payments. For purposes of this section, substance abuse treatment

includes receipt of inpatient or outpatient services or participation in alcoholics anonymous or a similar program. 1995 PA 156, Sec. 605.

- (4) A refugee or asylee who loses his or her eligibility for the federal supplemental security income program by virtue of exceeding the maximum time limit for eligibility as delineated in Section 402 of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 U.S.C. 1612, and who otherwise meets the eligibility criteria under this section shall be eligible to receive benefits under the state disability assistance program.

At Step 1, claimant's impairments do not meet or equal any Social Security Listing. Finding of Fact 12.

At Step 2, at last positive decision, claimant had cervical surgery that did not resolve his symptoms. Finding of Fact 10-11. At review, claimant had undergone a second surgery that resolved his symptoms. He had normal muscle tone, sensation, and reflexes. Finding of Fact 11. Claimant was deemed not disabled by the SSA and the decision was not appealed. Finding of Fact 12. Accordingly, the medical evidence of record is sufficient to establish that claimant has medically improved or that he did not meet the disability requirements at last positive decision.

At Step 3, claimant has medical improvement. Finding of Fact 13. Current medical evidence does not indicate that claimant has severe physical limitations that prevent all work. The record does not indicate that he has complications from his surgeries. The record indicates that he has no muscle wasting and has full sensation, reflexes, and muscle tone. Finding of Fact 11. Claimant was denied disability by the SSA and the decision was not appealed. Finding of Fact 12. See discussion at Step 2, above. Accordingly, claimant's improvement is related to his ability to perform work.

At Step 4, claimant's medical improvement is related to his ability to perform work. Finding of Fact 14. See Step 2-3, above.

At Step 5, claimant is post 2 cervical surgeries. The medical evidence indicates that claimant's symptoms are resolved. He has no muscle wasting. He has normal muscle tone, sensation, and reflexes. The record contains no objective medical evidence to establish another disabling condition. Department A.

At Step 6, claimant's past relevant employment has been playing and coaching hockey and doing road work. Finding of Fact 9. The medical evidence of record does not indicate that claimant has severe restrictions due to his condition. Finding of Fact 11. Employment such as claimant's past relevant employment typically requires lifting heavy weights and performing strenuous physical activity. The record is unclear as to whether claimant is able to perform such activities. Therefore, the medical evidence of record is not sufficient to establish that claimant has functional capacity to perform the tasks required by past relevant employment.

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).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 7, claimant is post 2 cervical surgeries. His symptoms are resolved. He is in no acute distress. He has normal muscle tone, sensation, and reflexes. Finding of Fact 11. Accordingly, the objective medical evidence of record is sufficient to establish that claimant is able to perform at least sedentary work activities. Considering claimant's

vocational profile (younger individual, high school or more education, and history of unskilled and skilled work) and relying on Vocation Rule 201.28, claimant is not disabled. Finding of Fact 15.

After careful examination of the record and for the reasons discussed at Steps 1-5 and 7 above, the Administrative Law Judge decides that claimant does not meet the federal statutory requirements for disability. Therefore, claimant does not meet the disability requirement for MA based on disability. For reasons discussed at Steps 1-5 and 7 above, claimant does not have severe impairments that prevent all work for 90 days or more. Therefore, claimant does not meet the disability requirements for SDA based on disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has not established disability for purposes of Medical Assistance and State Disability Assistance.

Accordingly, the department's action is HEREBY UPHELD.

/s/
Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 16, 2009

Date Mailed: June 17, 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.

JAB/db

cc:

