

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: 2007-23050
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 27, 2007
Cass County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 Tuesday, November 27, 2007. The claimant personally appeared and testified on his own behalf.

ISSUE

Did the department properly determine that the claimant has not established continued eligibility for disability under the Medical Assistance (MA-P) and State Disability Assistance (SDA) programs?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) On February 15, 2006, the claimant applied for MA-P and SDA without filing a retroactive MA-P application.

(2) On April 21, 2006, the Medical Review Team (MRT) approved the claimant for Medical Assistance and State Disability Assistance based on the claimant meets/equals applicable Social Security Listing 1.04 with a medical review required February 2007.

(3) On May 23, 2007, the MRT denied the claimant for MA-P stating that the claimant was no longer eligible for continued eligibility for MA-P disability based on medical review and for SDA that the claimant's physical or mental impairment does not prevent employment for 90 days or more.

(4) On July 3, 2007, the department caseworker sent the claimant a notice that his application was denied.

(5) On July 25, 2007, the department received a hearing request from the claimant, contesting the department's negative action.

(6) On October 26, 2007, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA-P and SDA eligibility for the claimant. The SHRT report reads in part:

The claimant was approved for benefits in April 2006 following the claimant's laminectomy and fusion surgery in [REDACTED]. In [REDACTED] and [REDACTED], the claimant reported that he was doing reasonably well following his surgery and he was considerably better than preoperatively. Based on the information in the file, the claimant has had improvement since his initial approval. There has been no evidence of significant neurological abnormalities. However, it is noted that there is not any very recent medical information in file. It is also noted that the claimant is scheduled for his Social Security Hearing on November 5, 2007.

The claimant has had medical improvement since his approval which was during his recovery time following his fusion. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of light work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile (younger individual, 12th grade education, and a history of working as a machinist, farm hand, and concrete laborer), MA-P is denied due to medical improvement using Vocational Rule 202.20 as a guide. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would no longer preclude work activity at the above stated level for 90 days.

(7) During the hearing on November 27, 2007, the claimant requested permission to submit additional medical information that needed to be reviewed by SHRT. Additional medical information was received from the local office on March 24, 2008 and forwarded to SHRT for review on March 25, 2008.

(8) On March 31, 2008, the SHRT considered the newly submitted objective medical evidence in making its determination of MA-P and SDA. The SHRT report reads in part:

The claimant was approved for benefits in April 2006 following the claimant's laminectomy and fusion surgery in [REDACTED]. In [REDACTED] and [REDACTED], the claimant reported that he was doing reasonably well following his surgery and he was considerably better than preoperatively. In [REDACTED], it was noted that the claimant had multiple tests that were unremarkable and there was no evidence of significant instability at his fusion. There has been no evidence of significant neurological abnormalities. However, in [REDACTED], the claimant was noted to have nonunion of the fusions and some loosening of the S1 screws bilaterally and he was also noted to have been noncompliant due to his smoking. Additional surgery was offered, but the claimant is thinking about it and he would have to quit smoking before the surgery. However, the claimant is able to do simple household chores and would be able to do at least sedentary work. It is expected that if he has further surgery, he will eventually be able to do at least light work. It is noted that the claimant had his Social Security Hearing on November 5, 2007, but there is no decision in the system as of this date.

The claimant has had medical improvement since his approval which was during his recovery time following his fusion. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of sedentary work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile (younger individual, 12th grade education, and history of unskilled work), MA-P is denied due to medical improvement using Vocational Rule 201.18 as a guide. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would no longer preclude work activity at the above stated level for 90 days.

(9) The claimant is a 49 year-old man whose date of birth is [REDACTED]. The claimant is 5' 10" tall and weighs 200 pounds. The claimant has lost 30 pounds because of his health. The claimant has a high school diploma. The claimant stated that he can read and write and do basic math. The claimant was last employed as a machinist on February 23, 2004. The claimant has also been employed as a farm hand, concrete laborer, auto mechanic, design engineer, and CNC programmer.

(10) The claimant's alleged impairments are sciatic nerve damage, back issues, and depression.

CONCLUSIONS OF LAW

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 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).

In general, claimant has the responsibility to prove that he/she is disabled. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Once an individual has been determined to be "disabled" for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. In evaluating whether an individual's disability continues, 20 CFR 416.994 requires the trier of fact to follow a sequential evaluation process by which current work activities, severity of impairment(s), and the possibility of medical improvement and its relationship to the individual's ability to work are assessed. Review may cease and benefits may be continued at any point if there is

substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

First, the trier of fact must determine if the individual is working and if work is substantial gainful activity. 20 CFR 416.994(b)(5)(i). In this case, the claimant is not substantially gainfully employed and has not worked since February 23, 2004. Therefore, the claimant is not disqualified from receiving disability at Step 1.

Secondly, if the individual has an impairment or combination of impairments which meet or equal the severity of an impairment listed in Appendix 1 to Subpart P of Part 404 of Chapter 20, disability is found to continue. 20 CFR 416.994(b)(5)(ii). In this case, the claimant's impairments or combination of impairments do not meet or equal the severity of an impairment listed in Appendix 1. Therefore, the claimant is disqualified from receiving disability at Step 2.

In the third step of the sequential evaluation, the trier of fact must determine whether there has been medical improvement as defined in 20 CFR 416.994(b)(1)(i). 20 CFR 416.994(b)(5)(iii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most recent favorable medical decision that the claimant was disabled or continues 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 claimant's impairment(s). If there has been medical improvement as shown by a decrease in medical severity, the trier of fact must proceed to Step 4 (which examines whether the medical improvement is related to the claimant's ability to do work). If there has been no decrease in medical severity and thus no medical improvement, the trier of fact moves to Step 5 in the sequential evaluation process.

In this case, the claimant has had medical improvement resulting in a decrease in medical severity. The claimant was approved by MRT on April 21, 2006 following a L5-S1 laminectomy with bilateral foraminectomy and L4-S1 fusion on [REDACTED].

On [REDACTED], the claimant's treating surgeon submitted a Medical Examination Report, DHS-49. The claimant was first examined on [REDACTED] and last examined on [REDACTED]. The claimant had a history of impairment and chief complaint of low back pain with radiation to right leg. The claimant's current diagnosis was spondylolisthesis secondary to nerve root entrapment and mild degenerative changes at L4-5. The claimant had a normal physical examination, but the treating surgeon noted sleep problems and depression.

(Department Exhibit 22)

The claimant's treating surgeon did not list any impairment for the claimant and stated that he could meet his needs in the home. (Department Exhibit 23)

On [REDACTED], the claimant's treating physician submitted a progress note on the claimant where he returned after having his myelogram and post-myelogram CT scan. The treating physician reviewed the films and saw no evidence of residual or recurrent nerve root compression. The claimant continues to complain of right leg pain. The claimant stated that this had never resolved 100%, but was and continues to be better than it had been prior to surgery. The claimant does feel though that the right leg pain is increasing in severity. The treating physician did not see that any further decompression would be an option. (Department Exhibit 181-184)

On [REDACTED], the claimant was given a bone scan at [REDACTED]. The radiologist's impression was that the findings in the lower lumbar spine were likely secondary to surgical hardware and degenerative change. The findings in the cervical spine,

shoulders, and sternoclavicular joints were likely on a degenerative basis with further investigation to be determined on a clinical basis. The focus of uptake identified in the mandible may represent periodontal disease. (Department Exhibit 185)

On [REDACTED], the claimant's treating surgeon submitted a re-evaluation note on the claimant from [REDACTED]. The claimant has a nonunion of both the L4-5 and the L5-S1 fusions. The claimant smoked during the entire fusion time and was warned about that several times so he was very noncompliant and has gone on to nonunions. The claimant also has some loosening of the S1 screws bilaterally. The treating surgeon stated that he would remove the hardware. The treating surgeon also stated that he would repair the claimant's fusion posteriorly using iliac bone graft, and then he would go anterior with the help of a vascular surgeon and remove the L4-5 disc and the L5-S1 disc and put in bone dowels with bone morphogenic protein. The claimant would have to quit smoking, but this procedure would offer at least a 90% chance of getting the spine fused under similar conditions in previous patients. (Department Exhibit 177-180)

At Step 3, the objective medical evidence on the record indicates that the claimant has had medical improvement. The claimant underwent a laminectomy and fusion surgery in [REDACTED]. The claimant has had medical improvement where he stated in a progress note on [REDACTED] that it continues to be better than before his surgery even though the claimant felt that the pain was increasing in severity. The claimant has continued to smoke and is noncompliant with his treatment, which his treating surgeon has felt has resulted in a nonunion of both the L4-L5 and L5-S1 fusion and the loosening of some of the S1 screws bilaterally on [REDACTED]. Therefore, the claimant is disqualified from receiving disability at Step 3.

In Step 4 of the sequential evaluation, the trier of fact must determine whether medical improvement is related to claimant's ability to do work in accordance with 20 CFR 416.994(b)(1)(i) through (b)(1)(iv). 20 CFR 416.994(b)(5)(iv). It is the finding of this Administrative Law Judge, after careful review of the record, that there has been medical improvement.

At Step 4, this Administrative Law Judge finds that the claimant's medical improvements are related to his ability to perform work. (See analysis at Steps 1, 2, and 3 above.) The claimant should be able to perform at least light work. The claimant had surgery in [REDACTED] and has had medical improvement. On [REDACTED], the claimant's treating physician did not list any physical or mental impairments or limitations for the claimant. He did have sleep problems and depression. The claimant's treating physician stated that the claimant continues to complain of right leg pain, but continues to be better than prior to surgery even though he feels it's increasing in severity on [REDACTED]. If there is a finding of medical improvement related to claimant's ability to perform work, the trier of fact is to move to Step 6 in the sequential evaluation process. The Administrative Law Judge finds that the claimant's medical improvement is related to claimant's ability to do work.

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).

In the instant case, the claimant stated that he has depression where he is currently taking medication, but not in therapy. The claimant's treating surgeon stated that the claimant had sleep problems and depression, but did not have any mental limitations and could meet his needs in the home on [REDACTED]. The claimant's treating surgeon cited the claimant was positive for depression but negative for everything else on [REDACTED]. On [REDACTED], the claimant's treating surgeon declined to fill the claimant's prescription for Prozac, which he felt would be best handled by the claimant's treating physician. As a result, there is insufficient medical evidence of depression that is so severe that it would prevent the claimant from working at any job.

In the sixth step of the sequential evaluation, the trier of fact is to determine whether the claimant's current impairment(s) is severe per 20 CFR 416.921. 20 CFR 416.994(b)(5)(vi). If the residual functional capacity assessment reveals significant limitations upon a claimant's ability to engage in basic work activities, the trier of fact moves to Step 7 in the sequential evaluation process. In this case, the Administrative Law Judge finds the claimant retains the residual functional capacity to perform light work. Therefore, the claimant is disqualified from receiving disability at Step 6. (See analysis in Steps 1, 2, 3, and 4.)

In the seventh step of the sequential evaluation, the trier of fact is to assess a claimant's current ability to engage in substantial gainful activities in accordance with 20 CFR 416.960 through 416.969. 20 CFR 416.994(b)(5)(vii). The trier of fact is to assess the claimant's current residual functional capacity based on all current impairments and consider whether the claimant can still do work he/she has done in the past.

The claimant does have a driver's license, but does not drive for a long time because he has to stop because of the pain. The claimant mostly microwaves only because of his hip and leg as the result of standing and bending over the stove. The claimant does grocery shop once a month, but has a problem with pain. The claimant does clean his own home with help. The claimant stated he can't bend, reach, and stretch. In addition, the claimant stated he can't deal with the pain. The claimant doesn't do any outside work or have any hobbies. The claimant felt his condition has worsened in the past because of the constant pain where some days he can't walk. The claimant testified that he has depression where he is taking medication, but not in therapy.

The claimant wakes up between 9:00 to 10:00 a.m. He drinks coffee and takes his medications, which knock him out. The claimant microwaves an egg sandwich. He goes to his appointments if he has any. He goes to bed between 9:00 to 10:00 p.m.

The claimant stated he could walk 100 yards. The longest he felt he could stand was 10 minutes. The longest he felt he could sit was 5 minutes. The heaviest weight the claimant felt he could carry was 10 pounds. The claimant stated his level of pain on a scale of 1 to 10 without medication was a 10 that decreases to an 8 with medication.

The claimant smokes a pack to a pack and a half of cigarettes a day. The claimant stopped drinking alcohol in 2004 where before he would drink a six-pack a day or periodically. The claimant does not or has ever taken illegal or illicit drugs. The claimant stated that there was no work that he thought he could do.

In this case, the Administrative Law Judge finds that the claimant does retain the capacity to perform his past work. The claimant was previously employed as a machinist, farm hand, concrete laborer, and auto mechanic, which are jobs that are performed at the medium to heavy

level. With the claimant's current back issues he would have a hard time doing the required bending, lifting, and stooping as required by those jobs. The claimant was previously employed as a design engineer and CNC programmer which are performed at the sedentary to light level in the national economy. The claimant can perform light to sedentary with his current impairments. (See analysis at Steps 1, 2, 3, 4, and 6.)

In the final step, Step 8, of the sequential evaluation, the trier of fact is to consider whether the claimant can do any other work, given the claimant's residual function capacity and claimant's age, education, and past work experience. 20 CFR 416.994(b)(5)(viii). In this case, the claimant does retain the residual functional capacity to perform light work under Medical-Vocational Rule 202.20. (See analysis at Steps 1, 2, 3, 4, 6, and 7.) Therefore, the claimant is disqualified from receiving continued Medical Assistance benefits because he does have medical improvement. The record does not establish that the claimant is unable to work for a period exceeding one year and that the claimant does not meet the disability criteria for continued Medical Assistance benefits.

The department's Program Eligibility Manual provides the following policy statements and instructions for caseworkers regarding the SDA program.

DISABILITY – SDA

DEPARTMENT POLICY

SDA

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older.

Note: There is no disability requirement for AMP. PEM 261, p. 1.

DISABILITY

A person is disabled for SDA purposes if he:

- . receives other specified disability-related benefits or services, or
- . resides in a qualified Special Living Arrangement facility, or
- . is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- . is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. PEM, Item 261, p. 1

Other Benefits or Services

Persons receiving one of the following benefits or services meet the SDA disability criteria:

- . Retirement, Survivors and Disability Insurance (RSDI), due to disability or blindness.
- . Supplemental Security Income (SSI), due to disability or blindness.
- . Medicaid (including spend-down) as blind or disabled if the disability/blindness is based on:
 - .. a DE/MRT/SRT determination, or
 - .. a hearing decision, or
 - .. having SSI based on blindness or disability recently terminated (within the past 12 months) for financial reasons.

Medicaid received by former SSI recipients based on policies in PEM 150 under "**SSI TERMINATIONS,**" INCLUDING "**MA While Appealing Disability Termination,**" does not qualify a person as disabled for SDA. Such persons must be certified as disabled or meet one of the other SDA qualifying criteria. See "**Medical Certification of Disability**" below.

- . Michigan Rehabilitation Services (MRS). A person is receiving services if he has been determined eligible for MRS and has an active MRS case. Do not refer or advise applicants to apply for MRS for the purpose of qualifying for SDA.
- . Special education services from the local intermediate school district. To qualify, the person may be:
 - .. attending school under a special education plan approved by the local Individual Educational Planning Committee (IEPC); **or**
 - .. not attending under an IEPC approved plan but has been certified as a special education student **and** is attending a school program leading to a high school diploma or its equivalent, **and** is under age 26. The program does not have to be designated as “special education” as long as the person has been certified as a special education student. Eligibility on this basis continues until the person completes the high school program or reaches age 26, whichever is earlier.
- . Refugee or asylee who lost eligibility for Social Security Income (SSI) due to exceeding the maximum time limit PEM, Item 261, pp. 1-2.

Because the claimant does not meet the definition for continued disability under the MA program and because the evidence in the record does not establish that the claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for continued eligibility for SDA.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established that it was acting in compliance with department policy when it denied the claimant's medical review for MA-P and SDA to determine the claimant was no longer eligible for continued disability benefits. The claimant

should be able to perform a wide range of light work. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is **AFFIRMED**.

/s/ _____
Carmen G. Fahie
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 27, 2009

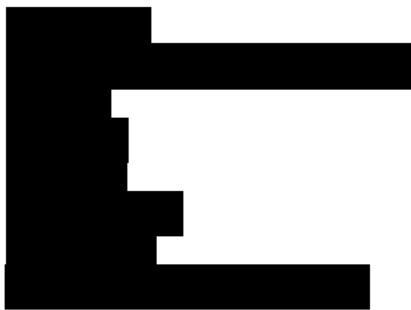
Date Mailed: July 27, 2009

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 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.

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