

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: 2007-15378
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 19, 2007
Genesee 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, an in-person hearing was held in Flint on September 19, 2007. Claimant personally appeared and testified under oath. The department was represented by Carolyn Snyder (ES).

Claimant requested additional time to submit new medical evidence. The new medical evidence was received and submitted to the State Hearing Review Team (SHRT) on September 20, 2007. Claimant waived the timeliness requirements so that his new medical evidence could be reviewed by SHRT. After SHRT's second non-disability determination, the Administrative Law Judge made the final decision below.

ISSUE

Did the department establish medical improvement that enables the claimant to perform substantial gainful work for MA-P/SDA purposes?

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 an MA-P/SDA recipient. He was approved for benefits in February 2006 due to HIV and cervical dysfunction.
- (2) On July 16, 2007, SHRT issued a decision denying ongoing MA-P/SDA benefits because claimant is able to perform light work. The original basis for claimant's MA-P/SDA approval was: Claimant is not able to perform any work.
- (3) Claimant's unable-to-work complaints are:
 - (a) Cervical dysfunction with pain;
 - (b) Left arm dysfunction/unable to raise arm above head;
 - (c) Difficulty moving left arm for normal work functions;
 - (d) Long standing/chronic back pain.
- (4) Claimant's vocational factors are: Age—50; Education—12th grade' post high school education—none; work experience—assistant manager/cashier for [REDACTED] (semi skilled) and hi-lo driver at a factory.

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

OBJECTIVE MEDICAL EVIDENCE (JULY 16, 2007):

A DHS-49 form, dated 12/2005, indicated claimant was cachectic. He had decreased range of motion (ROM) of the cervical spine and pain that radiates into both arms. His HIV was stable (Page 6). The doctor indicated claimant was limited to frequently lifting less than ten pounds and stand/walk less than two hours (Page 5).

On 2/14/2006, claimant was seen in follow-up of HIV. He was 138 pounds. His blood pressure was 132/92. Gait was intact and station was normal. There was no clubbing, cyanosis, inflammation, infections, hemorrhages, ischemia or deformities noted in his digits or nails. He had full ROM of the neck. He had full ROM and normal civility, strength and tone in the upper extremities. He was on no medication at the time (Page 19).

On 10/12/2006, claimant was 132 pounds (Page 48). Gait was intact and station was normal. There was no clubbing, cyanosis, inflammation, infections, hemorrhages, ischemia or deformities noted in his digits or nails. He had full ROM of the neck. He had full ROM and normal civility, strength and tone in the upper extremities. He was on no medication at the time (Page 47).

On 11/16/2006, claimant had normal grip strength and reflexes were intact (Page 60). On 2/9/2007, claimant was not currently taking any medications for his HIV. He had slightly decreased hearing but was otherwise doing well (Page 63).

A DHS-49 form dated 3/2007 indicated the claimant was 69" tall and 131 pounds. His exam was within normal limits except for decreased ROM of the cervical spine (Page 66). The doctor indicated that he could frequently lift less than ten pounds and stand/walk less than two hours. He was able meet his own needs in the home (Page 65).

ANALYSIS: Claimant's HIV is asymptomatic and he is on no medications for HIV as of 2/2007. Claimant reports pain in the cervical spine and arms. However, there were no neurological abnormalities noted. The objective findings do not support the limitations given on the 49 form. Claimant had normal grip strength and reflexes were intact. He had normal stability. In 2/2007, claimant's complaint was some hearing loss (partially due to bilateral cerumen impaction) but he did not have any other complaints. Claimant's exam was basically within normal limits.

- (6) A June 8, 2007 medical report from claimant's treating physician, [REDACTED] states as follows:

To Whom It May Concern:

Claimant is a patient of mine with diagnoses of HIV/aids and cervical disc disease, cervical neuropathy/chronic neck pain. He is currently under therapy through [REDACTED] on [REDACTED] therapy for his HIV and is also being treated for Chronic Pain Syndrome related to his chronic neck pain. At this time, due to his multiple medical problems. He is unable to work. He is unable to do any lifting, pushing, and pulling involving his arms. In addition, secondary to his HIV status, he has intermittent bouts of fatigue requiring periods of rest.

(7) The objective medical evidence shows that claimant has the following impairments: HIV/aids; cervical disc disease, cervical neuropathy/chronic pain. He is currently taking [REDACTED] therapy for his HIV. Secondary to his HIV status he has intermittent bouts of fatigue requiring periods of rest.

(8) The recent medical report from [REDACTED] dated June 8, 2007, rebuts the medical evidence relied on by SHRT to establish improvement. [REDACTED] June 8, 2007 report establishes that claimant's medical condition is approximately the same as it was when he was originally approved. There has been no significant improvement in his medical condition or in his ability to work.

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).

THE ABILITY TO DO SUBSTANTIAL GAINFUL ACTIVITY

Under current MA-P/SDA policy, the **Department has the burden of proof** to establish that claimant's mental and physical impairments have improved to the point that claimant is now medically/vocationally able to return to work. PEM 260 and 261. The department relied on reports from [REDACTED], dated [REDACTED] and [REDACTED], stating that claimant is able to perform substantial gainful work.

However, at the hearing, claimant submitted a recent letter ([REDACTED]) from [REDACTED] stating that claimant's physical condition remains the same and that due to his HIV status and his intermittent bouts with fatigue requiring rest. He is unable to perform substantial gainful activity.

Given the recent report from [REDACTED]), the Administrative Law Judge concludes that the department has not met its burden of proof to show that claimant is now able to perform substantial gainful activity.

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 a denial of claimant's MA-P and SDA benefits under PEM 260 and 261.

Accordingly, the department's decision to close claimant's MA-P/SDA is, hereby, **REVERSED.**

SO ORDERED.

/S/
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 10, 2009

Date Mailed: August 11, 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.

JWS/sd

cc:

