

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: 2007-18257

Issue No: 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 18, 2007

Genesee 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, December 18, 2007. The claimant personally appeared and testified with his father, [REDACTED], as a witness.

ISSUE

Did the department properly determine that the claimant has not established continued eligibility for disability under the State Disability Assistance (SDA) program?

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 June 15, 2006, the claimant applied for State Disability Assistance.

(2) On August 21, 2006, the Medical Review Team (MRT) approved the claimant for SDA stating that the claimant's physical and mental impairments prevent employment for 90 days or more with a medical review requested December 6, 2007.

(3) On May 3, 2007, the MRT denied the claimant for SDA stating that the claimant's physical or mental impairment does not prevent employment for 90 days or more.

(4) On May 11, 2007, the department caseworker sent the claimant a notice that his application was denied.

(5) On June 4, 2007, the department received a hearing request from the claimant, contesting the department's negative action.

(6) On August 20, 2007, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of SDA eligibility for the claimant. The SHRT report reads in part:

The impairments have improved. A severe impairment was not clinically documented. The claimant's impairments have improved and do not prevent all work. Therefore, SDA is denied per provisions of 20 CFR 416.994, medical improvement.

(7) During the hearing on December 18, 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 6, 2008 and forwarded to SHRT for review on March 14, 2008.

(8) On March 20, 2008, the SHRT considered the newly submitted objective medical evidence in making its determination of SDA. The SHRT report reads in part:

The claimant has a severe physical or mental impairment, but a review of the medical evidence of record shows that the alleged impairments do not meet or equal a Social Security listing. The objective medical evidence in file demonstrates the physical

residual capacity to perform a wide range of medium, unskilled work.

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 unskilled, medium work. Therefore, based on the claimant's vocational profile (younger individual, high school graduate, and an unskilled work history), SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

(9) The claimant is a 45 year-old man whose date of birth is [REDACTED]. The claimant is 6' 1" tall and weighs 220 pounds. The claimant has gained 30 pounds in the past years because he can't get around. The claimant has a high school diploma and one half year of college. The claimant can read and write and do basic math. The claimant was last employed as a forklift driver in March 2005. The claimant has also been employed as a truck driver and cement finisher.

(10) The claimant's alleged impairments are right tibia and fibula fracture, carpal tunnel syndrome, pinched nerve in neck, 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 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.

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 March 2005. 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. On [REDACTED], the claimant's treating physician completed a Medical Examination Report, DHS-49, for the claimant. The claimant was first examined on [REDACTED] and last examined on [REDACTED]. The claimant had a history of impairment, chief complaint, and current diagnosis of chronic back and neck pain, S/P motor vehicle accident, high blood, and depression. The claimant had a normal physical examination. The claimant's treating physician did note musculoskeletally that the claimant had mild neck tenderness and low back tenderness. Neurologically, the claimant was positive to SLR at 60 degrees on the right greater than on the left and the claimant had increased upper extremity reflexes. (Department Exhibit A)

The claimant's treating physician's clinical impression was that claimant was stable with limitations that were expected to last more than 90 days. The claimant used a cane as an assistive device that was medically required and needed for ambulation. The claimant could use both hands/arms for simple grasping, reaching, and fine manipulation, but neither for pushing/pulling. The claimant could use both feet/legs for operating foot/leg controls. The medical findings that support the above physical limitations were back pain, tenderness, and radiculopathy. The claimant had no mental limitations and could meet his needs in the home. (Department Exhibit B)

On [REDACTED], the claimant's treating physician completed a Medical Examination Report, DHS-49, for the claimant. The claimant was first examined on [REDACTED] and last examined on [REDACTED]. The claimant had a history of impairment and chief complaint of left neck pain and left arm pain and low back pain. The claimant's current diagnosis was left chronic neck pain and right low back pain, depression, and high blood pressure. The claimant had a normal physical examination. The claimant's treating physician did note that the claimant had low back, parasternal muscle spasms. (Department Exhibit 11)

The claimant's treating physician's clinical impression was that the claimant was stable with no limitations. The claimant could stand and/or walk for less than two hours of an eight hour workday and sit less than six hours of an eight hour workday. There were no assistive devices medically required or needed for ambulation. The claimant could use both hands/arms and feet/legs for repetitive actions. The claimant had no mental limitations. In addition, he can meet his needs in the home. (Department Exhibit 12)

At Step 3, the objective medical evidence on the record indicates that the claimant has had medical improvement. The claimant was status-post [REDACTED] right tibia and fibula fracture,

resulting in the MRT approval on August 21, 2006 where the condition began [REDACTED] with a medical review required December 2007. In [REDACTED], the claimant's treating physician stated that the claimant had no physical or mental impairments even though he had chronic neck and back pain. On [REDACTED], the claimant's treating physician stated that the claimant was stable, but he used a cane as an assistive device where he had limitations only in pushing and pulling but no mental limitations and no assistance needed in meeting his needs in the home. 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 an increase in the claimant's condition as presented at the time of the most favorable determination. The claimant's medical improvement is related to his ability to perform work. (See analysis at Steps 1, 2, and 3 above.)

At Step 4, this Administrative Law Judge finds that the claimant's medical improvement is related to his ability to do work. The claimant had a tibia and fibula fracture in [REDACTED], but the claimant has recovered. In [REDACTED] he had no physical limitations as cited by his treating physician. In [REDACTED], the claimant had some limitations in pushing and pulling with his arms/legs, but no mental limitations. If there is a finding of medical improvement related to the 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 the claimant's ability to do work.

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 that the claimant retains the residual functional capacity to perform light work. Therefore, the claimant is disqualified from receiving disability at Step 6.

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 not have a driver's license and does not drive because his license was suspended from a ticket in [REDACTED]. The claimant does not cook because he has no access to a kitchen, but he felt he could cook for a short time. The claimant does not grocery shop because his father does. The claimant did feel that he could, but he would have to use a motorized scooter. The claimant does clean his own home by sweeping. The claimant does not do any outside work. His hobby is playing cards. The claimant felt his condition has worsened in the past because he's had an increase in pain and he finds it hard to get around. The claimant testified that he does have a mental impairment of depression where he is currently taking medication, but not in therapy.

The claimant wakes up at 11:00 a.m. He lies in bed. He smokes a cigarette. He stays in bed. He watches TV. He occasionally visits a friend. He eats. The claimant goes to bed at 12:00 a.m. on average.

The claimant felt he could walk 100 feet. The longest he felt he could stand was 2 to 5 minutes. The longest he felt he could sit was one hour. The heaviest weight he felt he could carry was 1 pound. The claimant stated that his level of pain on a scale of 1 to 10 without medication was an 8/9 that decreases to a 6/7 with medication.

The claimant does smoke 15 cigarettes a day. He does drink two 24-ounce beers two to three times a week. The claimant stopped smoking marijuana 15+ years ago. The claimant stated that there was no work that he felt that he could do.

In this case, the Administrative Law Judge finds that the claimant retains the capacity to perform at least light work. The claimant's past work as a forklift driver, truck driver, and cement finisher were performed at the light to medium level. The claimant fractured his right tibia and fibula in [REDACTED] which would make forklift driving and truck driving difficult for an extended period of time while the claimant recovers. The claimant also worked as a cement finisher which would require a certain amount of bending, lifting, and standing to finish cement. The claimant basically broke his right leg in [REDACTED]. There was insufficient objective medical evidence submitted stating that the claimant had not recovered as is required in a similar fracture in four to six weeks. After this much time that has passed, the claimant should be able to perform his past relevant work. Therefore, the claimant does retain the capacity to perform his past relevant work and is denied at Step 7. (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 prior analysis in Steps 1, 2, 3, 4, 6, and 7.) Therefore, the claimant is disqualified from receiving continued State Disability Assistance benefits because he does not have medical improvement. The record does not establish that claimant is unable to work for a period exceeding 90 days and the claimant does not meet the disability criteria for continued State Disability Assistance.

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 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: May 20, 2009

Date Mailed: May 20, 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.

CGF/vmc

cc:

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