

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: 2007-20119
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 24, 2007
Kalkaska 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 October 24, 2007 in Kalkaska. Claimant personally appeared and testified under oath.

The department was represented by Heather Wysocki (ES).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on November 26, 2007. Claimant waived the timeliness requirement so that his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge made the final decision below.

ISSUES

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

(2) Did the department establish medical improvement to the extent that claimant is now able to work and no longer 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 an MA-P/SDA recipient. Claimant was approved for MA-P/SDA in October 2006. Claimant's case was scheduled for an eligibility review in June 2007. At review, claimant's case was denied by MRT and SHRT due to medical improvement. SHRT relied on Med-Voc Rule 202.13, as a guide.

(2) Claimant's vocational factors are: age--52; education--high school diploma; post-high school education--served as a truck driver in the [REDACTED] for 3 years, worked as a journeyman carpenter (7 years), also employed as a millwright electrofitting electrical power plants.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since February 2001, when he worked as a millwright. Claimant received an on-the-job injury in February 2005, which made it impossible for him to continue working.

- (4) Claimant has the following unable-to-work complaints:
- (a) Upper extremity dysfunction;
 - (b) Four cervical fusions (most recently October 2004);
 - (c) Left side weakness;
 - (d) Experiences a catch in his neck when he turns his head.

(5) Claimant was previously approved for benefits based on his cardiac dysfunction (coronary artery disease).

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

OBJECTIVE MEDICAL EVIDENCE (October 1, 2007):

Claimant had an acute myocardial infarction (MI) on October 4, 2006. He subsequently underwent angioplasty and stenting to both the left circumflex and right coronary artery with stents, 3 in the right coronary artery and 1 in the left circumflex artery. He had ischemic cardiomyopathy with an ejection fraction of 20% (page 20-34).

Claimant was admitted again on October 18, 2006 due to chest discomfort. He underwent cardiac catheterization which showed an ejection fraction (EF) estimated at 30%. The stents were widely patent in the proximal circumflex coronary artery and throughout the proximal, mid and distal right coronary artery with only mild irregularity (pages 235-236).

An echocardiogram, dated January 10, 2007, showed claimant had significant improvement in his LV function with ejection fraction (EF) of 40%, mild aortic insufficiency, mild mitral insufficiency, and mild TR and PI with normal RV systolic pressure estimated (pages 266-267). On exam, his lungs were clear and there were no rales, rhonchi or wheezes. The PMI was normal with regular rate and rhythm and normal S1 and S2. There was no murmur, rub or gallop. The radial and DP pulses were good and there was no edema. His resting ECG was consistent with an old inferoposterior infarction (page 282).

Claimant has had multiple cervical spine fusions. On January 12, 2007, claimant's motor exam was 5/5 and equal bilaterally. He had inconsistent sensory loss in the left upper extremity. There was no clear neurotomal or dermatomal sensory loss. Reflexes were +2 bilaterally at the patellar and Achilles'. +1 at the biceps and brachioradialis. Gait, heel, tip-toe and tandem were all within normal limits (page 331). He EMG, dated January 12, 2007, showed evidence of ulnar sensory mononeuropathy, no evidence of left ulnar mononeuropathy at the elbow. There were minimal motor unit abnormalities in the left upper extremities of unknown clinical significance. There was no 'EMG' evidence of left upper extremity radiculopathy (pages 327-328).

On May 14, 2007, claimant had reproducible chest 'wall' pain on right side along with a cough. Claimant stated that he felt his breathing had improved. He was well-nourished and groomed. In nor apparent distress. He had tenderness with deep inspiration. Heart sounds were normal (page 316).

ANALYSIS: Claimant had an MI and angioplasty with 4 stents in 10/2006. His ejection fraction was first estimated at 20% and then went up to 30% in 10/2006. However, in 1/2007, claimant had an echocardiogram that showed his ejection fraction was about 40%. In 5/2007, he reported his breathing had improved. He had chest wall pain on the right in 5/2007, but no evidence of angina. Claimant has had medical improvement. Claimant is capable of doing light work. However, we do not have any work history, but there was one report that showed he worked as a carpenter (page 233).

* * *

(7) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dish washing, light cleaning, vacuuming, laundry and grocery shopping. Claimant lives with his aunt.

(8) Claimant has a valid driver's license and drives an automobile approximately 3 times a month. Claimant is not computer literate.

(9) The probative medical evidence does not establish an acute physical condition that is expected to prevent claimant from performing customary work functions for the required period of time. Claimant has reported producible chest "wall" pain on the right side along with a cough. However, claimant also reports that his breathing has improved. He is well-nourished. He is in no apparent distress. He has had tenderness with deep inspiration. Heart sounds were normal. Also, claimant's recent physical exam showed his strength was 5/5 and equal bilaterally. He had inconsistent sensory loss in the left upper extremity. There was no clear neurotomal or dermatomal sensory loss. His reflexes were +2 bilaterally, at the patellar and Achilles'. +1 at the biceps and brachioradialis. Gait, heel, tip-toe and tandem were all within

normal limits. However, his EMG, dated 1/12/2007, showed evidence of ulnar sensory mononeuropathy, no evidence of left mononeuropathy at the elbow. There were minimal motor unit abnormalities in the left upper extremities of unknown clinical significance. There was no “EMG” evidence of left upper extremities radiculopathy.

(10) Claimant’s most prominent complaint is his upper extremity dysfunction/pain.

(11) Claimant continues to smoke cigarettes against medical advice.

CONCLUSIONS OF LAW

CLAIMANT’S POSITION

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

The medical records provided by claimant’s physicians show positive improvement in his cardiac/coronary condition. While he continues to have some sequelae related to his four cervical spine fusions, the medical evidence does not establish that claimant’s cervical dysfunction is so severe that he is totally unable to work.

DEPARTMENT’S POSITION

The department thinks that claimant has improved to the point where he is now able to do unskilled light work.

The department thinks that claimant’s impairments do not meet/equal the intent or severity of a Social Security listing.

The department thinks that claimant has had medical improvement in his coronary artery disease and sequelae.

The department thinks that the medical evidence of record shows claimant retains the capacity to perform a wide range of light work.

Therefore, based on claimant's vocational profile (closely approaching advanced age at 52, 12th grade education and a history of semi-skilled and skilled work), the department denied MA-P based on medical improvement, and based on Med-Voc Rule 202.13 as a guide.

The department denied SDA because the nature and severity of claimant's coronary and cervical impairments no longer preclude unskilled light work.

LEGAL BASE

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).

ABILITY TO DO SUBSTANTIAL GAINFUL ACTIVITY

Under current MA-P/SDA policy, the department has the burden of proof to show, by a preponderance of the medical evidence in the record, that claimant's cervical/cardiac impairments have improved to the point where he is now able to perform Substantial Gainful Activity. PEM 260 and 261.

CARDIAC IMPAIRMENTS: The medical evidence in the record establishes that claimant has significantly improved since he suffered a heart attack in October 2006.

The October 2006 heart attack, due to coronary artery blockage, was the basis for the department's approval of claimant for MA-P and SDA. However, claimant received four stents in his coronary arteries which have made a dramatic difference in his cardiac functioning. In October 2006, claimant's ejection fraction was only 20%. When he was evaluated in January 2007, his ejection fraction had improved to 40%.

In addition, claimant admits that his heart functioning is improving and that he is able to breath easier as well.

CERVICAL DYSFUNCTION: Claimant now alleges MA-P and SDA disability based on the sequelae of the four cervical fusions. The most significant symptom reported by claimant is left-sided weakness. He also reports an occasional catch in his neck, when he moves his head.

The medical evidence of record does not establish that this condition is so serious that it totally precludes substantial gainful activity.

Recent studies (an EMG, dated January 12, 2007) showed evidence of ulnar sensory mononeuropathy, no evidence of left ulnar mononeuropathy at the elbow. There were minimal motor unit abnormalities in the left upper extremity of unknown clinical significance. There was no "EMG" evidence of left extremity radiculopathy.

Based on the careful review of the current medical evidence on claimant's cervical status, the Administrative Law Judge concludes that claimant's cervical symptoms do not totally preclude substantial gainful employment.

In short, there is no medical/vocational evidence to establish that claimant is currently unable to work based on his cardiac dysfunction, his cervical dysfunction or a combination of the two.

Based on a careful review of the entire record, the Administrative Law Judge concludes that the department correctly decided to cancel claimant's MA-P/SDA due to medical improvement. The Administrative Law Judge concludes, based on the medical/vocational evidence of record, that claimant's cardiac impairment has improved to the extent that he is now able to perform Substantial Gainful Activity in the workplace. In addition, claimant's cervical impairments, do not totally preclude Substantial Gainful Activity.

At this time, claimant is able to perform work as a ticket taker for a theatre, as a carry-out clerk for a grocery store, as a parking lot attendant, or as a greeter for [REDACTED]

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has established the requisite medical improvement to support denial of continued 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, AFFIRMED.

SO ORDERED.

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

Date Signed: August 14, 2009

Date Mailed: August 14, 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 mailing date of the rehearing decision.

JWS/cv

cc:

