

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: 2007-23198

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 5, 2007

Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

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 December 5, 2007.

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA-P) at review and claimant's new State Disability Assistance (SDA) application?

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 has been a recipient of MA since 8/1/2003.
- (2) Claimant was previously approved MA-P by MRT on 5/19/06 for cardiomyopathy and subsequently continued for peripheral neuropathy. Claimant subsequently

applied on 12/11/06 for SDA based on a new application. At issue herein is claimant's MA-P at review and a new SDA application.

(3) On 6/1/07, the MRT denied continuing eligibility for MA-P and SDA as a new application.

(4) On 7/18/07, the DHS issued notice.

(5) On 7/26/07, claimant filed a timely hearing request. The department reinstated the action for the MA-P pending the outcome of the hearing.

(6) Claimant was denied SSI by the SSA appeal's council in November, 2006.

Claimant alleges that his impairments are worsening; one of the exceptions under PEM 260 with regards to a controlling SSA determination applies herein.

(7) On 10/30/07, the State Hearings Review Team (SHRT) denied claimant.

Pursuant to claimant's request to hold the record open for the submission of new and additional medical documentation, on 1/15/08 SHRT once again denied claimant.

(8) As of the date of application, claimant was a 41-year-old male standing 5' 8" tall and weighing 240 pounds. Claimant's BMI of 36.5 classifies him as obese. Claimant has a high school education.

(9) Claimant testified that he does not smoke.

(10) Claimant testified that he does not have an alcohol/drug abuse problem or history.

(11) Claimant has a driver's license and can drive a motor vehicle. Claimant limits his driving due to his peripheral neuropathy effecting both his hands and feet as well as some night vision issues.

(12) Claimant is not currently working. Claimant last worked in 2003. Claimant's work history is unskilled listing jobs such as cashier, porter, and auto glass installer.

(13) Claimant alleges disability on the basis of cardiomyopathy, diabetes, peripheral neuropathy, and high blood pressure.

(14) Medical evidence includes an SSI residual functional capacity assessment indicating that claimant can lift less than 10 pounds; can stand and/or walk less than 2 hours out of an 8-hour workday; can sit less than 6 hours out of an 8-hour workday. Claimant's pushing and/or pulling of hand and foot controls is limited. Claimant can never climb, balance, stoop, kneel, crouch, or crawl. Claimant experiences numbness and tingling in hands and feet as well as decreased muscle strength. Exhibits 34-36.

(15) An SSA functional capacity assessment indicates that due to neuropathy, claimant has significantly decreased sensation in the bilateral upper and lower extremities. Claimant has complications secondary to diabetes causing blurred vision and vision loss. Exhibit 33.

(16) The additional comments section of the SSA residual functional capacity assessment indicates claimant suffers from diabetic neuropathy, affecting upper and lower extremities bilaterally. Significantly decreased upper extremity muscle strength and difficulty opening jars and closing fists. Unsteady gait, due to bilateral neuropathy in his feet. Cannot stand for long periods of time. Severely fatigued and short of breath, due to cardiomyopathy and needs to rest for 30 minutes to an hour multiple times during the day. Medications also cause significant fatigue. Unable to maintain the pace of substantial gainful employment. Exhibit 29.

(17) A progress note dated 8/18/2005 indicates uncontrolled insulin-dependent diabetes mellitus. Poor dietary compliance.

(18) Exhibit 17 indicates chest pain and discomfort, shortness of breath, heartburn, dizziness, sleep disturbances.

(19) A 4/13/2007 progress note indicates IDDM with neuropathy and other complications, cardiomyopathy, cardiovascular disease, uncontrolled blood pressure, obesity, hyperlipidemia. Exhibit 7.

(20) A medical questionnaire from a practitioner states in part that claimant cannot perform work on a sustained basis for 8 hours per day, 5 days per week due to medical conditions, symptoms of conditions, and medications. Claimant testified at the administrative hearing that he needs a heart transplant.

### 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).

Federal regulations and state law is quite specific with regards to a review. At review, federal regulations state in part:

...the medical evidence we will need for a continuing disability review will be that required to make a current determination or decision as to whether you are still disabled, as defined under the medical improvement review standard.... 20 CFR 416.993.

...In some instances, such as when a source is known to be unable to provide certain tests or procedures or is known to be nonproductive or uncooperative, we may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that your disability has ended, we will develop a complete medical history covering at least the 12 months preceding the date you sign a report about your continuing disability status.... 20 CFR 416.993(b).

...If you are entitled to disability benefits as a disabled person age 18 or over (adult) there are a number of factors we consider in

deciding whether your disability continues. We must determine if there has been any medical improvement in your impairment(s) and, if so, whether this medical improvement is related to your ability to work. If your impairment(s) has not so medically improved, we must consider whether one or more of the exceptions to medical improvement applies. If medical improvement related to your ability to work has not occurred and no exception applies, your benefits will continue. Even where medical improvement related to your ability to work has occurred or an exception applies, in most cases, we must also show that you are currently able to engage in substantial gainful activity before we can find that you are no longer disabled. 20 CFR 416.994(b).

**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).

As noted above, there is a two-prong assessment required initially at review. The first prong is to analyze whether improvement is shown. If so, it must be shown that the improvement is related to an individual's ability to engage in work and work-like settings.

In this case, claimant has not shown improvement. Claimant, in fact, has had conditioning and additional impairments. Claimant also has significant peripheral neuropathy which is affecting his ability to engage in many tasks involving fine manipulation with his hands and feet.

As noted above, the burden of proof is on the department with regards to a review case. The department has not shown improvement. Thus, claimant is entitled to continuing MA.

With regards to claimant's SDA application, this is to be treated as a new application and the sequential analysis applies. With regards to the federal and state law, statutory authority is as stated below:

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).

Michigan administers the federal MA program. In assessing eligibility, Michigan defers to the federal guidelines.

Statutory authority for the SDA program states in part:

- (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.

These federal guidelines state in part:

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

At application claimant has the burden of proof pursuant to:

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

...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 sure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your

statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.

- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

It is noted that Congress removed obesity from the Listing of Impairments shortly after the removal of drug addition and alcoholism. This removal reflects the view that there is a strong behavioral component to obesity. Thus, obesity in-and-of itself is not sufficient to show statutory disability.

Applying the sequential analysis herein, claimant is not ineligible at the first step as claimant is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities in claimant's favor, this Administrative Law Judge (ALJ) finds that claimant meets both. The analysis continues.

The third step of the analysis looks at whether an individual meets or equals one of the Listings of Impairments. 20 CFR 416.920(d). Claimant does not. The analysis continues.

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by claimant in the past. It is the last step for alleged mental impairments. 20 CFR 416.920(f).

In this case, this ALJ finds that claimant cannot return to past relevant work on the basis of the medical evidence. The analysis continues.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that claimant cannot do a full range of sedentary work under the SDA program under the new application sequential analysis pursuant to Medical Vocational Grid Rule footnote 201.00(h). Thus, claimant is eligible for SDA.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's proposed closure of claimant's MA-P and denial of claimant's SDA as a new application were both incorrect.

Accordingly, the department's determinations are REVERSED.

The department is ORDERED to continue MA-P and to open an SDA case from the month of application and continuing, if otherwise eligible. The department is ORDERED to review claimant's eligibility for both programs in one year from the month of this Decision and Order.

The department is also ORDERED to issue any supplemental SDA benefits to claimant to which he may be entitled, if claimant meets the non-medical criteria for the SDA program from the month of application and forward.

/s/ \_\_\_\_\_  
Janice G. Spodarek  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: April 20, 2009

Date Mailed: April 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 mailing date of the rehearing decision.

JGS/cv

cc:

[REDACTED]

