

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.: 2007-25989
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
January 2, 2008
Wayne County DHS (76)

ADMINISTRATIVE LAW JUDGE: Judith Ralston Ellison

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 hearing was held on January 2, 2008. The Claimant appeared at the Department of Human Service (Department) in Wayne County District 76.

The record was left open to obtain new medical information after the Claimant waived the closure date on the record. The medical information was submitted to the State Hearing Review Team (SHRT) and the application was denied. This matter is now before the undersigned for final decision.

ISSUES

Whether the Department properly re-determined the Claimant is "not disabled" for purposes of Medical Assistance (MA) program and State Disability Assistance 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) Michigan Review Team (MRT) granted MA-P and SDA benefits for time periods September 2005 through April 2007 based on a DHS-49 medical examination report; hospital admitting/discharge summary and test results including breathing tests and blood gases; and ordered a review date of April 2007.
- (2) The Claimant's eligibility for MA-P and SDA benefits was re-determined in April 2007.
- (3) On August 20, 2007 the Department denied the re-determination application, finding improvement; and on March 26, 2008 the SHRT guided by Vocational Rule 202.17 denied the application finding the medical records indicated a capability of performing at least unskilled light work.
- (4) On August 20, 2007 the Claimant filed a timely hearing request to protest the department's determination.
- (5) Claimant's date of birth is [REDACTED]; and the Claimant is forty-six years of age.
- (6) Claimant completed grade 10; and can read and write English as evidenced by reading and writing in answering questions on the application forms and signing the forms as having completed. Department Exhibit (DE) 1, pp. 63-66.
- (7) Claimant last worked in 2004 in home health care and did lab work for a temporary service.
- (8) Claimant has alleged a medical history of asthma with attacks starting in 2000, hypertension, chronic obstructive pulmonary disease (COPD), osteoarthritis, sickle cell trait and polysubstance abuse. DE 1, pp. 5-6.
- (9) March 2008, in part:

Review of benefits granted in April 2006 for asthma. The claimant is a smoker and uses cocaine. Specialized breathing testing was not valid due to poor test quality. The claimant's functional level and work history are compatible to his cognitive abilities. He was

advised to stop smoking and using drugs. He was non-compliant with medications and could have been more compliant. SHRT.

(10) May 2007, in part:

CURRENT DIAGNOSIS: HTN, COPD, osteoarthritis, polysubstance abuse, sickle cell trait.

Weight 176, BP 120/92

NORMAL EXAMINATION AREAS: General, HEENT, Cardiovascular, Abdominal, Musculoskeletal, Neuro, Mental.

ABNORMAL: Respiratory: mild expiratory wheezing.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: Lifting/carrying less than 10 pounds 2/3 in 8 hour day, 10 pounds 1/3 of 8 hour day; never 20 pounds or over; Sit and/or walk less than 2 hours in 8 hour day; No assistive devices needed for walking; use of both hands/arms for simple grasping, reaching and fine manipulating; no use pushing/pulling; no use of either beet/legs for operating foot controls. Findings: mild expiratory wheezing and mild emphysematous changes. No mental limitations. No need for help in the home. Medications: as prescribed by hospital. [REDACTED], MD. DE 1, pp. 9-10.

(11) December 2007, in part:

HISTORY: States has had shortness of breath and wheezing for one day. States smokes pack a day, drinks couple beers and does cocaine with last use August 2007. Started on asthma exacerbation pathway. Chest X-ray; no acute pulmonary infiltrates. Normal heart size. Advised to stop smoking to help decrease exacerbation of asthma. Discharged home today in stable condition with medications: Advair, Spireva, Singular, Linsinopril and aerosol treatments as needed; and prednisone taper. Vital signs stable and O2 saturation 95% on room air. To follow with PCP one week and stop smoking. [REDACTED], MD.

(12) January 2008, in part:

Clinical Interview. HISTORY/OBSERVATIONS: States "healthy as a horse" prior to sudden onset of asthma in 2000. Denies history of current symptoms of emotional distress or psychiatric problems. Denies history of alcohol or drug abuse. In daily

functioning he is able to help with very light and simple chores. Sleep is normal and appetite good. Reports watching TV all day and visited often by family members.

Arrived on time to appointment and drove himself to office. Neatly dressed. Gait and posture were normal. Breathing was slightly labored and spoke at slow pace. Fine motor skills of hands were mildly impaired. Held a pencil awkwardly and struggled to manipulate small blocks on IQ test. Made good eye contact and presented as honest and spontaneous. Affect somewhat dull but mood calm and content. Thinking was logical and organized. Did not appear to malingering or exaggerate. Attention and concentration good and results considered valid.

Full Scale IQ was 63. Reading at low 3rd grade level. Spelling and arithmetic at 2nd grade level with poor comprehension skills. Scores place him in mildly mentally retarded range of intellectual functioning. Diagnosis: Axis I: Cognitive disorder but no previous records. Axis II: mild mental retardation. Axis V: GAF 60. [REDACTED] PhD, Licensed Psychologist. DE N, PP. 6-9.

Pulmonary Function Test: No interpretation. Poor test quality. DE N, pp. 1-5.

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 400.1 *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 require that the department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“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 CFR416.905

One 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 impairments 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 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 the work is substantial gainful activity (SGA). 20 CFR 416.994(b)(5)(i). In this case, under the first step, the Claimant testified to not performing SGA since 2004. Therefore, Claimant is not disqualified for MA at step one in the evaluation process.

Second, 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 or Part 404 of Chapter 20, disability is found to continue. 20 CFR 4126.994(b)(5)(ii). The Claimant has had exacerbations of breathing problems. The medical records indicate that in March 2007, the Claimant was hospitalized for breathing problems for four days. The medical records indicate the Claimant was smoking cigarettes, marijuana and cocaine.

In the hospital the Claimant was medically treated; and his condition improved. Medical advice was to stop smoking and using drugs. The Claimant was discharged home with several medications for breathing problems. But nine months later in December 2007, the Claimant was hospitalized again for breathing problems; and he was still smoking cigarettes. The Claimant

stated the cessation of his use of cocaine was in August 2007. The Claimant was medically treated and released in stable condition on medications for breathing problems; and again advised to stop smoking.

Under Appendix 1 to Subpart P of 20 CFR, Part 404: Listing 3.00, *Respiratory System*, the Claimant is “not disabled” by breathing problems. The Claimant did not present medical records evidencing a breathing problem which disabled him for a nine month time period, March 2007 to December 2007; and medical records show the Claimant did not stop smoking cigarettes and using cocaine.

At hearing in January 2008, the Claimant testified to quitting smoking in 2003 but this statement is not confirmed by medical records. See finding of facts 9-10. The undersigned questions the Claimant’s credibility. A Pulmonary Function Test result was not determinative of lung disorder because of poor test quality. See finding of fact 11.

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). According to 20 CFR 416.994(b)(5)(iii) medical improvement is defined as any decrease in the medical severity of the impairment 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 the claimant’s impairment.

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.) In this case the undersigned finds a medical improvement as evidenced by the fact that medical records did not establish disabling breathing problems from

March 2007 to December 2007. And for 2008, no medical records establish disabling breathing problems especially in light of the Claimant's lack of credibility regarding the smoking of cigarettes.

The second group of exceptions to medical improvement is found at 20 CFR 416.994(b)(4) are as follows: the Claimant failed to follow prescribed treatment which would be expected to restore claimant's ability to engage in substantial gainful activity. After careful review of the record, the undersigned finds the claimant has not followed medical advice to stop smoking and using drugs.

In the seventh step, the trier of fact assesses 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's past work was for temporary services in health care. The undersigned finds the Claimant cannot return to past work due to active substance abuse.

In the final step, Step 8, the trier of fact is to consider whether the claimant can do any other work, given the claimant's residual functional capacity and claimant's age, education and past work experience. 20 CFR 416.994(b) (5) (viii).

In this case, it is the finding of the undersigned, based upon the medical evidence, objective physical findings, and hearing record that Claimant's RFC for work activities on a regular and continuing basis is functionally limited to sedentary work. Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.967(a):

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking

and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Claimant at forty-six is considered a *younger individual*; a category of individuals age 45-49. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s), Rule 201.18, for younger individual, age 45-49; education: limited or less—at least literate and able to communicate in English [See finding of fact 6.]; previous work experience, unskilled or none; the Claimant is “not disabled” per Rule 201.18.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “not disabled” due to failure to follow prescribed medical treatment per 20 CFR 416.993

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 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).

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of

the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM 261.

In this case, there is insufficient evidence to support a finding that Claimant's impairments meet the disability requirements under SSI disability standards, and prevents basic work activity for ninety days. This Administrative Law Judge finds the Claimant is presently "not disabled" for purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based on the findings of fact and conclusions of law, decides that the Claimant is "not disabled" for purposes of the Medical Assistance program and the State Disability Program.

It is ORDERED; the department's determination in this matter is AFFIRMED.

/s/

Judith Ralston Ellison
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 05/14/09

Date Mailed: 05/15/09

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.

JRE/jlg

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cc:

