

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: 2007-26162

Issue No: 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 3, 2008

Branch County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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 on December 3, 2008. Claimant personally appeared and testified. He was assisted by [REDACTED]

ISSUE

Did the department properly propose to close claimant's State Disability Assistance (SDA) case at review?

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 a 48-year-old male with an extensive history of orthopedic impairments, including a cervical disc fusion at C6-7 secondary to a 2003 motor vehicle accident (Department Exhibit #1, pg 3).

(2) Claimant stands approximately 5'11" tall and is medically obese at approximately 244 pounds (BMI=34.0).

(3) Claimant has a high school equivalency education (GED) and a semi-skilled, medium exertional level work history as an auto factory quality control inspector until March 2007 (Department Exhibit #1, pg 26).

(4) The department approved SDA benefits in April 2007 secondary to multilevel thoracic and lumbar spine disease (Department Exhibit #1, pgs 46-47 and 52).

(5) A medical review of claimant's condition was scheduled for July 2007, at which time the department denied continued SDA based upon a finding of improvement at review (Department Exhibit #1, pgs 1 and 46).

(6) Claimant filed a timely hearing request; consequently, his benefits were continued pending the outcome of the appeal.

(7) Claimant's hearing was held on December 3, 2008, at which time he contended his condition had worsened, not improved.

(8) In March 2007 and November 2008, claimant had thoracic and lumbar spine MRI scans done (Department Exhibit #1, pg 3; Client Exhibit C, pgs 1 and 2).

(9) Claimant's 2008 thoracic spine MRI showed no interval change from the mild degenerative disc disease seen in 2007. (Department Exhibit #1, pg 3; Client Exhibit A, pg 2).

(10) However, claimant's 2008 lumbar spine MRI demonstrates a worsening of his condition because claimant has developed a small right paracentral disc herniation with S1 nerve root impingement (Client Exhibit C, pg 2).

(11) Likewise, claimant's 2008 Magnetic Resonance myelogram evidences L4-5 facet arthropathy (Client Exhibit C, pg 1).

(12) As a result, claimant has now developed left leg radiculopathy (burning, radiating leg pain); consequently, his treating physician added ██████████ to claimant's pain medication schedule in April 2008, in addition to ██████████ (Client Exhibit I, pgs 1 and 2).

(13) As of claimant's hearing date (12/3/08), he was still using these drugs in addition to multiple nonsteroidal anti-inflammatories with little relief of symptoms.

(14) Claimant's physical ability to sit, stand, bend, stoop, lift and carry is significantly compromised by his chronic pain symptoms (Client Exhibit A and B).

(15) On November 13, 2008, claimant's treating physician recommended claimant remain unemployed due to chronic degenerative disc disease in his lumbar spine (Client Exhibit E).

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 federal regulations at 20 CFR 416.994 require the department to show, by objective, documentary medical and/or psychological evidence that a previously diagnosed physical and/or mental condition has improved before MA can be terminated at review. This same requirement is applied to SDA cases. The governing regulations state:

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 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).

Functional capacity to do basic work activities. Under the law, disability is defined, in part, as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment(s)... 20 CFR 416.994(b)(1)(iv).

In determining whether you are disabled under the law, we must measure, therefore, how and to what extent your impairment(s) has affected your ability to do work. We do this by looking at how your functional capacity for doing basic work activities has been affected.... 20 CFR 416.994(b)(1)(iv).

Basic work activities means the abilities and aptitudes necessary to do most jobs. Included are exertional abilities such as walking, standing, pushing, pulling, reaching and carrying, and non-exertional abilities and aptitudes such as seeing, hearing, speaking, remembering, using judgment, dealing with changes and dealing with both supervisors and fellow workers.... 20 CFR 416.994(b)(1)(iv).

...A decrease in the severity of an impairment as measured by changes (improvement) in symptoms, signs or laboratory findings can, if great enough, result in an increase in the functional capacity to do work activities.... 20 CFR 416.994(b)(1)(iv)(A).

When new evidence showing a change in signs, symptoms and laboratory findings establishes that both medical improvement has occurred and your functional capacity to perform basic work activities, or residual functional capacity, has increased, we say that medical improvement which is related to your ability to do

work has occurred. A residual functional capacity assessment is also used to determine whether you can engage in substantial gainful activity and, thus, whether you continue to be disabled... 20 CFR 416.994(b)(1)(iv)(A).

...Point of comparison. For purposes of determining whether medical improvement has occurred, we will compare the current medical severity of that impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled to the medical severity of that impairment(s) at that time.... 20 CFR 416.994(b)(1)(vii).

...To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. 20 CFR 416.967(b).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

In this case, nothing on the record supports the department's contention claimant's physical condition has improved to the point where he is now capable of substantial gainful employment. As such, the department's proposed SDA case closure was erroneous, and it simply cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in proposing to close claimant's SDA case based upon a finding of improvement at review.

Accordingly, the department's action is REVERSED, and this case is returned to the local office for benefit continuation as long as all other eligibility criteria are met, with claimant's next mandatory review scheduled in December 2011 (unless Social Security disability is approved by that time). **SO ORDERED.**

/s/ _____
Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 1, 2009

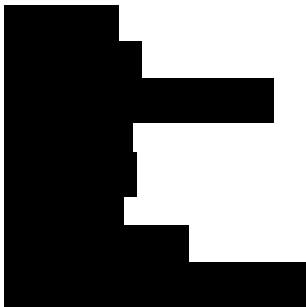
Date Mailed: December 8, 2009

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.

MBM/db

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