

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: 2007-26210
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 4, 2007
Saginaw 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 4, 2007. The claimant personally appeared and testified on his own behalf.

ISSUE

Did the department properly determine that the claimant has not established continued eligibility for disability under the Medical Assistance (MA-P) and State Disability Assistance (SDA) programs?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) The claimant was a recipient of MA-P and SDA with a medical review required May 2007.

(2) Subsequently, the Medical Review Team (MRT) denied the claimant's medical review stating that he was no longer disabled per 20 CFR 416.994.

(3) On July 17, 2007, the department caseworker sent the claimant a notice that his application was denied.

(4) On August 17, 2007, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On October 31, 2007, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA-P, retroactive MA-P, and SDA eligibility for the claimant. The SHRT report reads in part:

The claimant is 43 years old and alleges disability due to torn ligaments in the knee and depression. This claim was a medical review of SDA/MA-P benefits previously granted in December 2005 due to the inability of the claimant to perform work of any kind or meeting/equaling a listing. Medical improvement was found in May 2007 and benefits were terminated accordingly.

The claimant was approved by an ALJ in December 2006 as meeting Listing 12.04. However, the great weight of the objective medical evidence does not support this conclusion. The claimant's recent psychological consultative examination was unimpaired and unremarkable. His depression was maintained and controlled with medication. His memory was intact. There was no evidence of a disabling physical or mental impairment that would preclude basic work activity.

The medical evidence of record does not document a mental/physical impairment(s) that significantly limits the claimant's ability to perform basic work activities. Therefore, MA-P is denied per 20 CFR 416.921(a). Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 due to lack of severity.

(6) During the hearing on December 4, 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 3, 2010 and forwarded to SHRT for review on March 24, 2010.

(7) On March 25, 2010, the SHRT considered the newly submitted objective medical evidence in making its determination of MA-P, retroactive MA-P, and SDA. The SHRT report reads in part:

The claimant is 46 years old and alleges continuing disability due to torn ligaments in the knee and depression. He has 14 years of education and a history of unskilled work. This claim is a medical review of SDA-MA-P benefits previously granted in December 2006. Medical improvement was found in May 2007 and benefits were terminated.

The claimant was denied Social Security and SSI disability by the ALJ in December 2007. The ALJ found that the claimant could do light work. The claimant had some crepitus, tenderness, and decreased range of motion of the left knee. The x-rays of the knee were negative. He has a history of substance abuse, bipolar, and a personality disorder. However, his thought processes were logical and coherent.

This is a medical review of SDA/MA-P benefits that were previously allowed in December 2006. The MRT denied the benefits due to medical improvement in May 2007. The claimant was denied Social Security and SSI disability by the ALJ in December 2007. The ALJ found that the claimant could do light 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 simple, unskilled, light work. Therefore, based on the claimant's vocational profile (younger individual, 14 years of education, and history of unskilled work), MA-P is denied using Vocational Rule 202.20 as a guide. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would no longer preclude work activity at the above stated level for 90 days.

(8) The claimant is a 46 year-old man whose date of birth is [REDACTED]. The claimant is 6' 2" tall and weighs 313 pounds. The claimant has gained 40 pounds in the past year because he's not active. The claimant has a high school diploma and two years of college. The claimant stated he can read and write and do basic math. The claimant was last employed as a maintenance supervisor in January 2005. The claimant has also been employed as an engineer tester, supervisor, lost prevention worker, security, machine builder, and maintenance worker.

(9) The claimant's alleged impairments are bursitis of the elbow, loss of cartilage in the left knee, depression, and bipolar disorder.

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 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).

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 January 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 was given a medical status examination from the [REDACTED] hospital. The claimant had casual dress with fair hygiene, but his posture was slouched. The claimant's motor behavior was slow with retarded movements and in mild distress. The claimant showed anger and apprehension during the session. The claimant was irritable with a worried facial expression. The claimant's eye contact was appropriately focused with talkative speech quantity and a labile affect. The claimant's mood was anxious, depressed, angry, and irritable. His thought processes were logical and coherent. The claimant did not exhibit signs of hallucinations, suicidal ideations, or homicidal ideations. The claimant had adequate reality testing with an alert level of responsive. The claimant was oriented x4. His attention/

concentration were mildly impaired. His memory functions were adequate where his judgment and insight were fair. The claimant declined the use of medication. The claimant currently uses tobacco and was given a tobacco cessation pamphlet to assist him with stopping smoking. The claimant was started on medication for his mental impairments and psychotherapy. (Department Exhibit C-E)

On [REDACTED], the claimant was given x-rays of the bilateral knees as a result of a history of work-related injury to left knee. The radiologist's impression was a negative right and left x-ray of the bilateral knees. (Department Exhibit D1)

On [REDACTED], the claimant's treating physician submitted a progress note on the claimant. The claimant was alert and oriented x3 and in no acute distress. The claimant had a normal physical examination. Pulses were +2 bilaterally. Intradigital spaces had improved since his previous visit and he did get his pigmentation back at the intradigital space. The claimant had possible posttraumatic arthritis where he was awaiting orthopedic surgery. The claimant's depression and bipolar disorder were stable and in control with medication. The claimant was using medication for his erectile dysfunction. The claimant's infection of the intradigital spaces was improved with medication. (Department Exhibit A5-A6)

On [REDACTED], the claimant's treating physician submitted a progress report on the claimant's behalf. The claimant had a normal physical examination, but he noted that the claimant had gained 36 pounds since [REDACTED]. The claimant had crepitus at the left knee and there was severe tenderness on palpation with decreased range of motion and decreased strength in the left leg. The claimant's depression and bipolar disorder was stable. His infection of the intradigital spaces has improved with medication. (Department Exhibit A10)

On [REDACTED], the claimant was given a psychological evaluation by an independent medical examiner, [REDACTED]. The independent medical consultant clinical psychologist's diagnosis was major depression, recurrent, mild-to-moderate severity with no interepisodic recovery, and no psychotic symptoms with a Tier II diagnosis of personality disorder, NOS, with narcissistic and borderline features. The claimant was a GAF of 55-65. There was no cognitive impairment impeding his occupational functioning. The claimant required treatment that was psychotherapeutic and psychopharmacological in focus. In addition, a referral to a physician for an evaluation of a trial of anti-depressant medication was warranted and he was already on mood stabilizer medications. The claimant should be referred to Michigan Rehabilitation Services for vocational retraining. The claimant's prognosis was guarded. (Department Exhibit 5-15)

On [REDACTED], the claimant's treating physician submitted a Medical Examination Report and progress report on behalf of 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 bipolar disorder, depression, and left knee pain, which was also his current diagnosis. The claimant had a normal physical examination except that the treating physician noted pain in the left knee. (Department Exhibit 33)

The claimant's treating physician's clinical impression was the claimant was stable with no physical limitations. The claimant did not medically require or need an assistive device for ambulation. The claimant could use both hands/arms and feet/legs for repetitive action. The claimant also had no mental limitations and could meet his needs in the home. The claimant's extremities showed no edema although there was some pain in the left knee. For the claimant's depression and bipolar disorder his medication dosage was increased and he was advised to

follow-up with a psychiatrist. The claimant would see an orthopedic surgeon for his left knee pain. (Department Exhibit E5-E6 and E24)

On [REDACTED], the claimant's treating physical submitted a progress note on the claimant's behalf. The claimant had a medical history of depression, bipolar disorder, left knee osteochondral injury to the lateral femoral condyle for which he was being followed by an orthopedic surgeon. The claimant was seeing a psychiatrist for his bipolar disorder. The claimant had some pain issues secondary to osteochondral injury. The claimant's vitals were stable and he had been losing weight as advised. The last time, the claimant had eczema where he was given medication. The claimant needs to be followed for influenza and pneumonia shots and also for a colonoscopy once he reaches the age. The claimant was a smoker and counseled regarding quitting smoking. (Department Exhibit A26)

At Step 3, the objective medical evidence on the record indicates that the claimant has had medical improvement. The claimant is in treatment for his mental impairments and has had improvement with his infection. The claimant should be able to perform simple, unskilled, light work. 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 medical improvement.

At Step 4, this Administrative Law Judge finds that the claimant's medical improvement is related to the claimant's ability to do work. See prior analysis at Step 3. Thus, this Administrative Law Judge finds that claimant's medical improvement is related to his ability to

do work. If there is a finding of medical improvement related to claimant's ability to perform work, the trier of fact is to move to Step 6 in the sequential evaluation process.

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 the claimant retains the residual functional capacity to perform simple, unskilled 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 has a driver's license, but does not drive because he has problems with his knee. The claimant does not cook, just microwaves because he has no patience. The claimant does not grocery shop, his mom does, but he is physically able, but does not like going into crowded stores. The claimant does clean his own home by vacuuming, washing dishes, and cleaning the bathroom. The claimant stated that he can't bend or kneel. The claimant doesn't do any outside work or have any hobbies. The claimant felt his condition as worsened because he was cut off of MA. The claimant stated for his mental impairments, that he is not taking medication or in therapy.

The claimant wakes up between 10:00 to 11:00 a.m. He watches TV. He sleeps. He goes to bed between 1:00 to 3:00 a.m. The claimant stated that his sleep was irregular.

The claimant felt he could walk $\frac{1}{4}$ of a mile. The longest he felt he could stand was 10 minutes. The longest he felt he could sit was 15-20 minutes. The heaviest weight he felt he could carry and walk was 15-20 pounds. The claimant stated that his level of pain on a scale of 1 to 10 without medication was a 10 that decreases to a $\frac{2}{3}$ with medication.

The claimant smokes a $\frac{1}{2}$ pack of cigarettes a day. He drinks alcohol occasionally. He stopped smoking marijuana and cocaine in 2002 and 2003. The claimant stated that there was no work that he thought 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 was previously employed as a lost prevention clerk, security officer, and maintenance worker which are all jobs that are performed at the light level. The claimant is currently not in therapy and not taking medication for his mental impairments so he may find the skilled supervision of a supervisor and/or engineer tester difficult to perform. Therefore, the claimant does retain the capacity to perform some of his past relevant work and is denied at Step 7.

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. Therefore, the claimant is disqualified from receiving continued Medical Assistance benefits because he does have medical improvement. The record does not

establish that the claimant is unable to work for a period exceeding 12 months and the claimant does not meet the disability criteria for continued SDA.

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.

Because the claimant does not meet the definition of continued disability under the MA program and because the evidence in the record does not establish that the claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for continued SDA.

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 MA-P and SDA to determine the claimant was no longer eligible for continued disability benefits. The claimant should be able to perform a wide range of simple, unskilled, 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 28, 2010

Date Mailed: May 28, 2010

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.

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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:

