

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg No. 2008 14293
Issue No. 2009; 4031
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date:
June 25, 2008
Clare 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 the claimant's request for a hearing. After due notice, an in-person hearing was held on Wednesday, June 25, 2008. The claimant personally appeared and testified on his own behalf with 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 a material fact:

1. The claimant was a recipient of MA-P and SDA based on an Administrative Law Judge decision with a medical review required November 2007.
2. On January 14, 2008, the Medical Review Team (MRT) denied the claimant's continued eligibility for MA-P and retroactive MA-P and SDA stating that the claimant's physical and mental impairment does not prevent employment for 90 days or more.

3. On January 25, 2008, the department caseworker sent the claimant a notice that his application was denied.
4. On January 31, 2008, the department received a hearing request from the claimant, contesting the department's negative action.
5. On April 28, 2008, 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 44 years old and alleges disability due to/or has received treatment for back pain, arthritis, carpal tunnel syndrome, fused discs in back, hips, and depression. The claimant has a limited education and a history of skilled work. This is a medical review of a previously approved claim.

The claimant was approved by the Administrative Law Judge on November 8, 2006 primarily due to his back condition. He has had intervention in the way of back surgery to improve his back condition on [REDACTED], [REDACTED]. His mental and physical outlook has improved and would be expected to continue to improve. Although he would still have some limitations, he should be capable of performing a wide range of light work. Medical opinion was considered in light of CFR 416.927. The evidence in file does not demonstrate any other impairment that would pose a significant limitation.

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 light work. Therefore, based on the claimant's vocational profile (younger individual, limited education, and a history of skilled work), MA-P is denied using Vocational Rule 202.18 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

6. During the hearing on June 25, 2008, 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 8, 2010 and forwarded to SHRT for review on April 5, 2010.
7. On April 9, 2010, the SHRT considered the newly submitted objective medical evidence in making its determination of MA-P and SDA. The SHRT report reads in part:

The claimant is 46 years old and alleges disability due to back pain, arthritis, carpal tunnel syndrome, fused discs in his back, hip problems, and depression. He has a limited education and a history of unskilled and semi-skilled work. This is a medical review of benefits. The claimant had been approved for benefits by the ALJ in November 2006. The MRT denied benefits in January 2008.

The claimant was approved for benefits by the ALJ in November 2006 primarily due to his back condition. He did have surgery since that ALJ approval in [REDACTED], when he underwent laminectomy and fusion at L3-5. His condition did improve. In [REDACTED] he reported new onset of pain in his back along with pain in his neck and left shoulder. In [REDACTED], he had some weakness in the flexors, but his strength was otherwise 5/5. An EMG nerve conduction did show some left lower extremity plexopathy. In [REDACTED], he reported good relief from pain from a previous cervical epidural injection and the doctor was going to repeat the injection. The claimant's condition has improved with surgery since the ALJ decision in November 2006. He continues to have pain in his back, neck, and shoulder. However, he does not have evidence of significant weakness or of muscle atrophy. He would be able to do simple, unskilled, light work.

The claimant's condition has improved since surgery since the ALJ decision in November 2006. 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. In lieu of detailed work history, the claimant will be returned to other work. Therefore,

based on the claimant's vocational profile (younger individual, limited education, and history of unskilled and semi-skilled work), MA-P is denied due to medical improvement and using Vocational Rule 202.25 as a guide. Retroactive MA-P was considered in this case and is also denied. 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 45 year-old man whose date of birth is [REDACTED]. The claimant is 5' 10" tall and weighs 270 pounds. The claimant completed the 9th grade school. The claimant stated he can read or write and do basic math. The claimant was last employed as a well driller at the heavy level in 2004. The claimant has certification that is still valid as a mechanic, which is his pertinent work history. The claimant also has a valid chauffeur's license and as been a wrecker driver.
9. The claimant's alleged impairments are arthritis, chronic pain, carpal tunnel syndrome, degenerative disc disease, depression, and high blood pressure controlled with medication. The claimant had back surgery in [REDACTED] that fused his lower disc.

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 the 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 (formerly known as the Family Independence Agency) 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 2004. 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’s treating pain specialist submitted a progress note on behalf of the claimant. The claimant returned with recurrent posterior neck and bilateral pain. The claimant underwent cervical epidural injections in May 2008 with good relief of pain diagnosed as radiculopathy of C5-6 and C6-7 where a MRI showed degenerative

changes with neural foraminal narrowing. The pain has reoccurred over the past two months and continues to affect the same posterior neck and bilateral shoulders with some degree of pain radiating distally to the left upper extremity. The claimant has had no significant change in his interval health history. (Department Exhibit E70)

On [REDACTED], the claimant underwent an electromyogram nerve conduction study of the bilateral lower extremities at [REDACTED]. The radiologist's conclusion was abnormal electrodiagnostic examination where the studies revealed quite severe denervation in the left lower extremity on needle examination, but not in the right lower extremity. The abnormalities were suspicious of left lower extremity lumbosacral plexopathy in the left lower extremity. In the right lower extremity, they may be subacute to chronic right S1 radiculopathy. However, in the right lower extremity, there was no evidence of right plexopathy or focal neuropathy. The findings were significant in the left lower extremity. (Department Exhibit E30-E40)

On [REDACTED], the claimant saw his treating specialist at [REDACTED] for a physical examination. The claimant's objective findings were normal except that he had 1+ biceps, trace left biceps, 1+ patella, and trace bilateral Achilles. DP pulses were 2+. The claimant gait was stable and comfortable without an assistive device. Cervical range of motion was full. Bilateral shoulder range of motion was full. Lumbar range was 85 degrees of flexion, 10 degrees of extension. The claimant had a healed lumbar incision. Myofascial tenderness palpated along the cervical area and bilateral trapezius areas. Impingement signs were negative in the left shoulder. The treating specialist's impression was low back pain, status post laminectomy fusion; neck pain with left-sided radicular features; and myofascial pain. The claimant was treated with medication and physical therapy was recommended. The claimant's treating specialist also discussed weight control and smoking cessation. (Department Exhibit E60-E62)

On [REDACTED], the claimant's treating neurosurgical specialist submitted a progress note on behalf of the claimant. The claimant was over a year old from his lumbar decompression and fusion. He had reached maximum medical improvement in terms of his surgery. The claimant stated that he had pain above his previous surgery which he thought was coming from that disc. The claimant did not have any weakness, but had continued pain and distribution associated with atrophy in his calf muscles on the left. The claimant also had continued pain in his neck with radiation to his shoulder. The claimant may need shoulder surgery. The claimant's limitations seemed to be consistent with the treating specialist's physical findings. The treating surgeon stated that there were no other surgical remedies. The atrophy in the claimant's left leg may be attributed to permanent nerve damage. (Department Exhibit E31)

On [REDACTED], the claimant underwent a MRI of the lumbar spine, six views. The radiologist compared it to a previous study of [REDACTED] where was no significant interval change. The claimant's prior laminectomy was noted. The height and alignment of the vertebral bodies were maintained. There was narrowing of the intervertebral disc spaces at L2-L3, L4-L5, and L5-S1. There were small osteophytes projecting from the

endplates of L4 and L5. There was no evidence of acute fracture, subluxation, or dislocation. There had been no significant interval changed since the previous study. (Department Exhibit E82)

On [REDACTED], the claimant underwent a psychiatric evaluation at [REDACTED]. The claimant was diagnosed with dysthymic disorder. He was given a GAF of 40. The claimant had moderate depression that was chronic with diminished self esteem. The claimant had moderate anger that was chronic with symptoms of irritability. The claimant denied having suicidal thoughts were no known suicide attempts. The claimant did have suicidal risk factors of chronic pain/illness/disability and a history of drug abuse and dependence. The claimant did not have any threats of violence. The claimant does have sleep problems where he has difficulty falling asleep and awakens frequently. (Department Exhibit E17-E25)

On [REDACTED], the claimant had MRIs at [REDACTED]:

- Cervical spine: The radiologist's impression was degenerative changes at the C5-C6 disc level with most pronounced degenerative narrowing of the left C5-C6 neural foramen related to the left posterior and uncovertebral spurring and disc protrusion. (Department Exhibit E9-E10)
- Imaging of the left shoulder: The radiologist's impression was permanently downward sloping acromion with degenerative change of the acromioclavicular joint, which can be a cause of rotator cuff impingement. There were changes of moderately severe rotator cuff tendinopathy/partial tear, but no evidence of complete tear was seen. There was small cyst at the paralabral/superior bony glenoid area, which can be associated with labral tear. (Department E7-E8)

On [REDACTED] the claimant underwent a MRI of the lumbar spine at [REDACTED]. The radiologist's impression was status post laminectomy with spinal fusion of L3 through L5-S1. There was multi-level degenerative disc disease, but no acute bony abnormalities for subluxation were seen. (Department Exhibit E11-E12)

On [REDACTED], the claimant's treating specialist submitted a consultative note on behalf of the claimant. The claimant's x-rays showed good positioning of his fusion mass and alignment. The claimant was having pain in his calf occasionally. The claimant had taken himself off morphine. The treating specialist thought it would be reasonable for the claimant to see a rehab doctor to see what type of restrictions he would have in the future. (Department Exhibit E37)

At Step 3, the objective medical evidence on the record indicates that the claimant has had medical improvement. On [REDACTED], the claimant's x-rays showed good positioning of his fusion mass and alignment. The claimant is having pain in his calf

occasionally and has taken himself off morphine. The claimant was scheduled for rehab. The claimant is post laminectomy where on [REDACTED] the claimant still had pain, but no new weakness. He did have atrophy of his calf muscle on the left probably from nerve damage. He continues to have pain in his neck radiating to his shoulder. The claimant did get some relief in [REDACTED] from through cervical epidural injections where on [REDACTED], the pain specialist stated that the pain had returned two months previous. The claimant's MRI performed in [REDACTED] showed his laminectomy with degenerative disc disease, but no acute bony abnormalities. He did have rotator cuff impingement as a result of a labral tear. His cervical spine showed degenerative changes with narrowing, spurring, and disc protrusion. The claimant underwent surgery with physical therapy, but still has some impairment. The claimant is also undergoing treatment at [REDACTED]. The claimant was diagnosed with dysthymic disorder on [REDACTED] with a GAF of 40. 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.

The claimant does have a driver's license and does drive, but does have low back pain. The claimant cooks once a week although standing is a problem. The claimant grocery shops once or twice a month where he leans on the cart and it takes longer. The claimant does not clean his own home because standing is a problem. The claimant does mow the lawn where it takes a whole day riding 8 hours. The claimant doesn't have any hobbies. The claimant felt his condition has worsened in the past year because he can't get around without a cane where he has no pinched nerves since surgery and can walk better. The claimant stated that he has depression where he is currently not taking medication, but is in therapy.

The claimant wakes up between 4:00 to 10:00 a.m. He lies on the couch and watches TV. He gets mail from the mailbox. He goes to bed between 9:00 p.m. and 1:00 a.m. the claimant stated that he has a sleeping disorder where he can't sleep.

The claimant felt he could walk 30 feet. The longest he felt he could stand was 2-5 minutes. The longest he felt he could sit was 25 minutes. The heaviest weight the claimant felt he could carry and walk was 8 pounds. The claimant stated his level of pain on a scale of 1 to 10 without medication was a 6/7 that decreases to a 0/1 with medication.

The claimant smokes a pack of cigarettes a day. He has 2 beers a month. He stopped marijuana in his teens. The claimant stated that there was no work he felt he could do.

This Administrative Law Judge finds that the claimant's medical improvement is related to his ability to do work. The claimant should be able to perform simple, unskilled, light work. Therefore, the claimant is disqualified from receiving disability at Step 4. 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 does have a severe impairment. Therefore, the claimant is not 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 was previously employed as a well driller in 2004 at the heavy level. The claimant was also employed as a certified mechanic, which is his pertinent work history which is probably at the medium to heavy level. The claimant was also employed as a licensed chauffeur and a wrecker driver. The claimant has mental limitations as a result of his depression and he also has limitations with his back, neck, and shoulder. The claimant is unable to perform his past relevant work. The claimant should be able to perform simple, unskilled, light work. Therefore, the claimant does not retain the capacity to perform his past relevant work.

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 one year and the claimant does not meet the disability criteria for continued MA-P.

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/him 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 application for continued disability for MA-P and SDA. The claimant should be able to perform 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: July 6, 2010

Date Mailed: July 6, 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.

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 / vc

cc:

