

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: 2008-14954

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 9, 2008

Kent County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

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 July 9, 2008.

ISSUE

Whether the Department of Human Services (department) has established that claimant is no longer disabled for Medical Assistance (MA) and State Disability Assistance (SDA).

FINDINGS OF FACT

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

(1) During October 2007, claimant was a recipient of MA and SDA. His assistance was due for medical review.

(2) January 7, 2008, the Medical Review Team (MRT) denied claimant's medical review. Department Exhibit A.

(3) October 30, 2007, the department sent claimant written notice that his assistance would end.

(4) January 28, 2008, the department received claimant's timely request for hearing.

(5) May 5, 2008, the State Hearing Review Team (SHRT) denied claimant's medical review. Department Exhibit B.

(6) July 9, 2008, the telephone hearing was held. Prior to the close of the record, the claimant requested the record remain open for additional medical evidence. Claimant waived the right to a timely hearing decision. August 21, 2008, after review of all medical evidence, the SHRT again denied claimant's medical review. State Hearing Review Team Decision, 8-21-08.

(7) Claimant asserts disability based on impairments caused by heart disease and depression.

(8) Claimant testified at hearing. Claimant is 46 years old, 5'5" tall, and weighs 180 pounds. Claimant completed high school and is able to read, write, and perform basic math. Claimant has a driver's license and is able to drive. Claimant cares for his needs at home.

(9) Claimant's past relevant employment has been in factory work, machine operation, window sales, and fast food prep.

(10) At last positive decision in October 2006, claimant was post myocardial infarction. He had a diagnosis of dilated cardiomyopathy with an ejection fraction of 20 percent. Department Exhibit A, pgs 37-38.

(11) At review in June 2007, claimant's cardiologist indicated that claimant has mild systolic impairment with estimated ejection fraction of 50 percent. Doctor opined that claimant is able to occasionally lift ten pounds, stand and/or walk at least two hours in an eight-hour day, perform a full range of repetitive actions with both upper extremities, and operate foot and leg

controls with both lower extremities. Doctor opines that claimant has no mental limitations. Department Exhibit A, pgs 96-98. It is noted that on April 2, 2008, claimant suffered a bout of renal insufficiency and hypotension. At that time, claimant was approved SDA by the MRT effective April 2008 with a medical review required during October 2008. Department Exhibit A, pgs 180-203.

(12) When comparing the objective medical evidence at review with the objective medical evidence provided at last positive decision in October 2006, it appears that medical improvement of claimant's physical condition has occurred. At last positive decision, claimant was recovering from myocardial infarction and had ejection fraction estimated at 20 percent. At review, claimant's heart function was improved and his ejection fraction was estimated at 50 percent. The objective medical evidence of record does not indicate claimant's condition causes severe limitations or impairments prior to the April 2008 renal insufficiency bout.

(13) Claimant's medical improvement is related to the ability to work.

(14) Claimant is capable of performing work activities.

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).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...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 blood pressure, X-rays);

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

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

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

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).

5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

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).

If you have more than one impairment, we will consider all of your impairments of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. This assessment of your capacity for work is not a decision on whether you are disabled but is used as a basis for determining the particular types of work you may be able to do despite your impairment. 20 CFR 416.945.

...When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work. 20 CFR 416.945(b).

...When we assess your mental abilities, we first assess the nature and extent of your mental limitations and restrictions and then determine your residual functional capacity for work activity on a

regular and continuing basis. A limited ability to carry out certain mental activities, such as limitations in understanding, remembering, and carrying out instructions, and in responding appropriately to supervision, coworkers, and work pressures in a work setting, may reduce your ability to do past work and other work. 20 CFR 416.945(c).

...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).

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).

2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or

emancipated minors meeting one or more of the following requirements:

- (a) Recipient of Supplemental Security Income, Social Security or Medical Assistance due to disability or 65 years of age or older.
 - (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.
 - (c) A resident of an adult foster care facility, a home for the aged, a county infirmary, or a substance abuse treatment center.
 - (d) A person receiving 30-day post-residential substance abuse treatment.
 - (e) A person diagnosed as having Acquired Immunodeficiency syndrome (AIDs).
 - (f) A person receiving special education services through the local intermediate school district.
 - (g) A caretaker of a disabled person as defined in subdivision (a), (b), (e), or (f) above.
- (2) Applicants for and recipients of the State Disability Assistance program shall be considered needy if they:
- (a) Meet the same asset test as is applied to applicants for the Family Independence Program.
 - (b) Have a monthly budgetable income that is less than the payment standard.
- (3) Except for a person described in subsection (1)(c) or (d), a person is not disabled for purposes of this section if his or her drug addiction or alcoholism is a contributing factor material to the determination of disability. 'Material to the determination of disability' means that, if the person stopped using drugs or alcohol, his or her remaining physical or mental limitations would not be disabling. If his or her remaining physical or mental limitations would be disabling,

then the drug addiction or alcoholism is not material to the determination of disability and the person may receive State Disability Assistance. Such a person must actively participate in a substance abuse treatment program, and the assistance must be paid to a third party or through vendor payments. For purposes of this section, substance abuse treatment includes receipt of inpatient or outpatient services or participation in Alcoholics Anonymous or a similar program. 1995 PA 156, Sec. 605.

- (4) A refugee or asylee who loses his or her eligibility for the federal Supplemental Security Income program by virtue of exceeding the maximum time limit for eligibility as delineated in Section 402 of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 U.S.C. 1612, and who otherwise meets the eligibility criteria under this section shall be eligible to receive benefits under the State Disability Assistance program.

At Step 1, claimant's impairments do not meet or equal any Social Security Listing.

Finding of Fact 11-14.

At Step 2, the objective medical evidence of record is sufficient to establish that claimant has medically improved at medical review. At last positive decision in 2006, claimant was recovering from myocardial infarction and his heart function was severely impaired. At medical review, claimant's heart function was vastly improved. Finding of Fact 10-14.

At Step 3, claimant's medical improvement is related to his ability to perform work. His heart function has improved. His cardiologist indicates that claimant is capable of performing at least sedentary work duties. Finding of Fact 10-14.

At Step 4, claimant's medical improvement is related to the ability to perform work. See Step 3 above.

At Step 5, claimant does not have current severe impairments. During April 2008, claimant suffered a bout of renal insufficiency. He was approved SDA from April 2008 through

October 2008. The objective medical evidence of record indicates that claimant's condition is resolving. The record contains no objective medical evidence to establish that claimant has severe limitations or impairments due to renal insufficiency beyond October 2008. Finding of Fact 10-14. See discussion at Steps 2 and 3 above.

At Step 6, claimant's past relevant employment has been doing factory work, machine operator, window sales, and fast food prep. The record does not appear to establish that claimant is incapable of performing the tasks required by these jobs. See discussion at Steps 1-4 above. Finding of Fact 9-14.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.

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. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be

very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls....

20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 7, the objective medical evidence of record establishes that claimant has heart disease. He has a history of myocardial infarction. At review, claimant's heart function was improved. Claimant's cardiologist indicates a lifting limit of occasionally lifting ten pounds. Doctor does not indicate other physical limitations. Accordingly, claimant is capable of performing at least sedentary work activities. Considering claimant's vocational profile (younger individual, high school graduate, and history of unskilled work) and relying on Vocational Rule 201.21, claimant is not disabled. Finding of Fact 10-14.

After careful examination of the record and for the reasons discussed at Steps 1-7 above, the Administrative Law Judge decides that claimant does not meet the federal statutory requirements for disability. Therefore, claimant does not meet the disability requirements for MA based on disability. For reasons discussed at Steps 1-7 above, claimant does not have severe impairments at review that prevent all work for 90 days or more. Therefore, at review, claimant does not meet the disability requirements for SDA based on disability. The Administrative Law

Judge cannot address claimant's disability beyond the October 2008 SDA approval provided by MRT in May 2008.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has established claimant is not disabled for purposes of Medical Assistance and State Disability Assistance.

Accordingly, the department's action is, hereby, UPHELD.

/s/

Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 2, 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 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.

JAB/db

cc:

