

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: 2008-16605  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
February 10, 2009  
Antrim County DHS

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

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 February 10, 2009.

ISSUE

Was a recovered nondisability medically established?

FINDINGS OF FACT

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

- (1) On March 4, 2008, the DHS proposed Medicaid/SDA termination per PEM 264/261.
- (2) Claimant's vocational factors are: age 50, 11<sup>th</sup> grade education, and past semi-skilled work as a welder with lifting/carrying up to 50 pounds; semi-skilled press operator

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requiring lifting/carrying up to 100 pounds; unskilled sorter of farm products requiring lifting/carrying up to 100 pounds.

(3) Claimant's medical diagnoses are: heart attack, stroke, bypass surgery and pulmonary embolism.

(4) Claimant's disabling symptoms/complaints are: forgetfulness and short-term memory loss; able to perform some basic physical work activities as defined below but limited to walking 20 to 30 feet, limited to lifting/carrying 15 pounds, walking 30 feet. Gets "fidgety" after sitting 30 minutes; gets tired and legs shake after standing 30 minutes; gets dizziness if movements are too fast resulting in loss of balance; gets dizziness from climbing a ladder; and gets too weak to shovel snow.

(5) Claimant has not performed substantial gainful work since [REDACTED] after his heart attack.

#### **[Mental Impairments]**

(6) Medical exam on [REDACTED] states the claimant has difficulty finding words and difficulty with speech; that he had slowed mentation, no focal motor deficits, and numbness in the hands bilaterally; that he tended to drop things unless they were really rough in appearance; that he was noted to fall occasionally, but it seemed to be due to inattentiveness and slow thought process where he trips on things. (Medical Packet, pages 218 and 303.)

(7) Medical exam on [REDACTED] states the claimant had a depressed affect, or short-term memories and work searching; and that he was mentally limited in comprehension, memory and sustained concentration (Medical Packet, pages 209 and 303.)

(8) Medical exam on [REDACTED] states the claimant has poor memory and limited sustained concentration (Medical Packet, pages 267, 268 and 303).

(9) Medical exam on [REDACTED] states the claimant had normal intensity, clarity and sustained ability of speech without stutter (Medical Packet, page 271).

**[Physical Impairment]**

(10) Medical exam on [REDACTED] states the claimant's condition is stable; that his limitations are expected to last more than 90 days; that out of an eight-hour workday, he can stand less than two hours; that he can lift/carry occasionally 20 pounds; that he needs no assistive device for ambulation; and that he cannot use his extremities on a repetitive basis (Medical Packet, page 209).

(11) Medical exam on [REDACTED] states the claimant's condition is improving; that his limitations are expected to last more than 90 days; that he can lift/carry occasionally 20 pounds; that he needs no assistive device for ambulation; and that he cannot use his extremities on a repetitive basis (Medical Packet, page 267).

(12) Medical exam on [REDACTED] states the claimant walks with a normal gait and needs no assistive device; that grip strength remains intact; that dexterity is unimpaired; that he could pick up a coin, button clothing, and operate and open a door; that he had no difficulty getting on an off the examination table, no difficulty in heel and toe walking, and no difficulty squatting; that range of motion of the joints is normal; that motor strength and function are normal; that sensory function remains intact; that reflexes are intact and symmetrical; and that finger to nose was adequately performed (Medical Packet, pages 270 and 271).

(13) SHRT report dated [REDACTED] states the claimant's impairment(s) does not meet/equal a Social Security Listed impairment(s); and that he has had medical improvement (Medical Packet, page 302).

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).

Facts above are undisputed.

"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 CFR 416.905.

**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.

**Non-severe impairment(s).** An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities. 20 CFR 416.921(a).

...If medical improvement has occurred, we will compare your current functional capacity to do basic work activities (i.e., your residual functional capacity) based on the previously existing impairments with your prior residual functional capacity in order to determine whether the medical improvement is related to your ability to do work. The most recent favorable medical decision is the latest decision involving a consideration of the medical evidence and the issue of whether you were disabled or continued to be disabled which became final. 20 CFR 416.994(b)(1)(vi).

**Basic work activities.** When we talk about basic work activities, we mean 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).

**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).

...To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decision to stop disability benefits are made objectively, neutrally and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be continued at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

The steps are:

Step 1. Do you have an impairment or combination of impairments which meets or equals the severity of an impairment listed in Appendix 1 of Subpart P of Part 404 of this chapter? If you do, your disability will be found to continue. 20 CFR 416.994(b)(5)(i).

Step 2. If you do not, has there been a medical improvement as defined in paragraph (b)(1)(i) of this section? If there has been medical improvement as shown by a decrease in medical severity, see Step 3 in paragraph (b)(5)(iii) of this section. If there has been no decrease in medical severity, there has been no medical improvement. (see Step 4 in paragraph (b)(5)(iv) of this section.) 20 CFR 416.994(b)(5)(ii).

Step 3. If there has been medical improvement, we must determine whether it is related to your ability to do work in accordance with paragraphs (b)(1)(I) through (b)(1)(iv) of this section; i.e., whether or not there has been an increase in the residual functional capacity based on the impairment(s) that was present at the time of the most recent favorable medical determination. If medical improvement is not related to your ability to do work, see Step 5 in paragraph (b)(5)(v) of this section. 20 CFR 416.994(b)(5)(iii).

Step 4. If we found in Step 2 in paragraph (b)(5)(ii) of this section that there has been no medical improvement or if we found at Step 3 in paragraph (b)(5)(iii) of this section that the medical improvement is not related to your ability to work, we consider whether any of the exceptions in paragraphs (b)(3) and (b)(4) of this section apply. If none of them apply, your disability will be found to continue. If any of the first group of exceptions to medical improvement applies, see Step 5 in paragraph (b)(5)(v) of this section. If an exception from the second group of exceptions to medical improvement applies, your disability will be found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process. 20 CFR 416.994(b)(5)(iv).

Step 5. If medical improvement is shown to be related to your ability to do work or if any of the first group of exceptions to medical improvement applies, we will determine whether all your current impairments in combination are severe (see Sec. 416.921). This determination will consider all your current impairments and the impact of the combination of these impairments on your ability to function. If the residual functional capacity assessment in Step 3 in paragraph (b)(5)(iii) of this section shows significant limitation to your ability to do basic work activities, see Step 6 in paragraph (b)(5)(iv) of this section. When the evidence shows that all your current impairments in combination do not significantly limit your physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature. If so, you will no longer be considered disabled. 20 CFR 416.994(b)(5)(v).

Step 6. If your impairment(s) is severe, we will assess your current ability to engage in substantial gainful activity in accordance with 416.961. That is, we will assess your residual functional capacity based on all your current impairments and consider whether you can still do work that you have done in the past. If you can do such work, disability will be found to have ended. 20 CFR 416.994(b)(5)(vi).

Step 7. If you are not able to do work you have done in the past, we will consider one final step. Given the residual functional capacity assessment and considering your age, education, and past work experience, can you do other work? If you can, disability will be found to have ended. If you cannot, disability will be found to continue. 20 CFR 416.994(b)(5)(vii).

**The DHS has the burden of proof** to establish by a preponderance of the medical evidence in the record that the claimant has recovered a nonsevere mental/physical impairment(s).

**Step #1**

This step determines whether the claimant meets/equals a Social Security listed impairment(s) per Appendix 1, Subpart P, Part 404.

SHRT considered the listings and decided the claimant did not meet/equal a listed impairment(s). The claimant offered no medicals to the contrary. Therefore, Step 2 has not been established.

**Step #2**

This step determines whether the claimant has medically improved.

The medical mentioned above show an improved condition physically, but not mentally. The claimant has had a history of mental problems (see Facts #6 and #7 above). Medicals on [REDACTED] (Fact #8) state he is still limited with poor memory and sustained concentration.

Therefore, medical improvement has not been established for the mental impairment and the analysis is required to continue to Step 4.

**Step #4**

This step determines whether any exceptions in the medical improvement standard apply. If none apply, then the claimant's disability will be found to continue. And this ALJ determined none applied. Therefore, this step was established in the claimant's favor.

Therefore, this ALJ is not persuaded that a recovered nondisability has been established by the preponderance of the medical evidence.



DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that a recovered nondisability was not medically established.

Accordingly, proposed Medicaid/SDA termination is REVERSED.

/s/  
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William A. Sundquist  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: March 23, 2009

Date Mailed: March 23, 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.

WAS/tg

cc:

