

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████, Claimant

Reg. No.: 2008-19134
Issue No.: 2009, 4031
Case No.: ██████████
Load No.: ██████████
Hearing Date:
September 18, 2008
Lake County DHS

ADMINISTRATIVE LAW JUDGE: Judith Ralston Ellison

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 hearing was held on September 18, 2008. The Claimant appeared at the Department of Human Service (Department) in Lake County.

The closure date was waived to obtain additional medical information. An Interim Order was issued to obtain new medical records which were reviewed by the State Hearing Review Team (SHRT) who denied the application. This matter is now before the undersigned for final decision.

ISSUES

Whether the Department properly determined the Claimant is "not disabled" for purposes of Medical Assistance based on disability (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) In April 2008 the Claimant was re-determined for MA-P and SDA benefits.
- (2) On April 23, 2008 the Department denied the application: and on December 9, 2008 the SHRT found medical improvement and guided by Vocational Rule 202.13 denied the application.
- (3) On April 30, 2008 the Claimant filed a timely hearing request to protest the Department's determination.
- (4) Claimant's date of birth is [REDACTED]; and the Claimant is fifty-three years of age.
- (5) Claimant completed grade 12; and can read and write English and perform basic math.
- (6) Claimant last worked in 2002 as a press operator for plastic molding, was a die setter, press operator, did housekeeping work, welding, hardware store, and nurse aid.
- (7) Claimant has alleged a medical history of heart problems with bypass surgery and defibrillator, left leg numbness, gum infection, hepatitis C with jaundice and ascites, small intestine damage and denies mental impairments.
- (8) December 2008, in part:

Benefits were approved in December 2007. In September 2007 the claimant's ejection fraction was 30%. The February and March 2008 medical records did not show evidence of signs or symptoms of ongoing congestive heart failure. The claimant was noted to have on going alcoholism. Based on the file, the claimant has had medical improvement since December 2007; and he should be able to do light work. SHRT.

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 400.1 *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).

Federal regulations require that the department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“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 CFR416.905

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity; the severity of impairment(s); residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. A determination that an individual is disabled can be made at any step in the sequential evaluation. Then evaluation under a subsequent step is not necessary.

Evaluation steps. 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 decisions 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. 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.

In this matter, the medical record does not establish heart problems, carpal tunnel syndrome, pinched nerve of leg or dental problems are disabling according to the Listing 4.00 Cardiac System or Listing 1.00 Musculoskeletal System.

Medical records from November 2007 through October 2008 from [REDACTED], [REDACTED] and [REDACTED] office indicate placement of a cardiac defibrillator in [REDACTED] with heart regular, rate and rhythm up to and including [REDACTED] with normal vital signs and lungs clear.

In November 2007 there were complaints of pain in right leg but no numbness or tingling. The Claimant failed to follow medical advice to attend physical therapy. But by September 2008 another complaint was left lower extremity parasthesias and recommendation for EMG. But there was no indication of physical limitations in the medical records, however the EMG results were no included with the medical records.

The medical records primarily refer to continuing alcohol and tobacco abuse; and regular medical advice to stop using both substances up to and including October 2008.

(ii) *Step 2.* If you do not, has there been 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.

Thus according to the medical records the cardiac problems have experienced a medical improvement and the musculoskeletal impairments have no medically prescribed physical limitations. But other of multiple impairments continues to cause problems. The Claimant is continuing medical care for hepatitis C and continues to experience gastrointestinal symptoms including nocturnal incontinence and diarrhea.

(iii) *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 4 in paragraph (b)(5)(iv) of this section. The undersigned finds the medical improvement is not related to the Claimant's ability to do work.

(iv) *Step 4.* If we found at 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. The undersigned finds the Claimant's disability continues due to the combination of multiple impairments without total medical improvement.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 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).

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM 261.

In this case, there is sufficient medical evidence to support a finding that Claimant's impairments meet the disability requirements under SSI disability standards, and prevents other work activities for ninety days. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based on the findings of fact and conclusions of law, decides that the Claimant is "disabled" for purposes of the Medical Assistance and State Disability assistance program.

It is ORDERED; the Department's determination in this matter is REVERSED.

Accordingly, The Department is ORDERED to initiate a review of the April 2008 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant of its determination in writing. Assuming Claimant is otherwise eligible for program benefits, the Department shall review Claimant's continued eligibility for program benefits in May 2010.

/s/

Judith Ralston Ellison
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 05/14/09

Date Mailed: 05/15/09

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.

JRE/jlg

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