

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claim

ant

Reg. No: 2008-30421

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 7, 2009

St. Clair County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 January 7, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly determine that claimant was no longer eligible to receive Medical Assistance (MA-P) and State Disability Assistance (SDA) benefits?

FINDINGS OF FACT

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

- (1) Claimant was receiving Medical Assistance and State Disability Assistance benefits based upon disability.
- (2) Claimant's case was scheduled for review in December 2007.

(3) On June 30, 2008, the Medical Review Team denied claimant continued Medical Assistance and State Disability Assistance benefits stating that claimant could perform his prior work.

(4) On July 1, 2008, the department caseworker sent claimant notice that his application was denied.

(5) On July 21, 2008, claimant filed a request for a hearing to contest the department's negative action.

(6) On September 22, 2008, the State Hearing Review Team again denied claimant's application stating that claimant has medical improvement and is capable of performing light work per 20 CFR 416.967(d) and unskilled work per 20 CFR 416.968(a).

(7) Claimant is a 59-year-old man whose birth date is [REDACTED]. Claimant is 6' ½" tall and weighs 260 pounds. Claimant attended one year of college and is able to read and write and does have basic math skills.

(8) Claimant was working at [REDACTED] through Michigan Works racking clothes on hangers, earning \$ [REDACTED] per hour and working 20 hours per week.

(9) Claimant was incarcerated from [REDACTED] and was a chef for 15 years.

(10) Claimant alleges as disabling impairments: diabetes mellitus, hypertension, muscle spasms in both arms and neuropathy.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 the instant case, at the time of the hearing the claimant was working for [REDACTED]. [REDACTED] Claimant submitted paperwork indicating that he was employed under the [REDACTED] [REDACTED] Employment Program through Title V of the Older Americans Act, which states that participants in this program work an average of 20 hours per week at a non-profit or government, or agency making a minimum of \$ [REDACTED] per hour. Per the Older Americans Act of 1965, Title V, Section 509, page 95 (42 USC 305 6g), funds received by eligible individuals from projects carried out under the program established in this subchapter shall not be considered to be income affecting individuals for the purpose of determining eligibility of such an individual, or any person, to participate in any housing program for which federal funds may be available or for any income determination under the Food Stamp Act of 1977 (7 USC 2011, *et seq.*)(Page 28)

In the instant case, claimant was working and earning \$ [REDACTED] per hour, which equals approximately \$ [REDACTED] per month. Therefore, this Administrative Law Judge will find that claimant was not engaged in substantial gainful activity and 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).

This Administrative Law Judge finds that claimant testified on the record that he can walk one block, stand for 40 minutes, sit for 40 minutes at a time and is able to squat and bend at the waist, shower and dress himself, tie his shoes, and carry what he states is a "plate of food." Claimant testified that he can catch the bus five days Monday through Friday, and he rides the

bus for 40 minutes, that he cooks one time per day and cooks things like greens and vegetables, that he grocery shops one time per month and rides the bus and carries one bag, that he does laundry, and that he lives at the ministry and is single with no children under 18.

This Administrative Law Judge finds that claimant's impairments do not meet or equal the severity of an impairment listed in Appendix 1.

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 Medical Review Team approved claimant for Medical Assistance and State Disability Assistance from December 2007, based upon disability. Claimant's alleged impairments at that time were left shoulder numbness and pain as well as diabetes mellitus, muscle spasms, stroke, and permanent damage to both arms. Updated medical information after the approval indicates that claimant does have uncontrolled diabetes mellitus, and his glucose level on April 18, 2007 was 442.

A Health Clinic Medical Report of May 21, 2008 indicates that claimant was a 58-year-old man. His temperature was 98 degrees Fahrenheit. His vision without glasses was 20/25 in the

right eye and the left eye was 20/20. HEENT: Tympanic membranes are intact. Fundoscopic examination, underdilated pupil does not reveal any pathology. Neck had no bruit and no mass. CVS: There is a systolic ejection murmur, Grade II/VI in left sternal border and aorta focus. Chest: auscultation and perfusion of lungs was okay. In the abdomen, there is a scar of previous appendectomy in the right lower quadrant. In the skin, there were macular spots in the anterior parts of the legs, probably due to diabetes. In the extremities, there were no pedal pulses. There is no edema. In the spine, straight leg raising on both sides was 90 degrees without revealing any pain. Cervical spine and lumbosacral spine movements were okay. Squatting was 100% and he could get up. In his bones and joints, the hand grip was okay on both sides. Flexion of the knees, no pain. Tip toe, tandem gait, and heel walking were fine. Nervous system: Patient was oriented to time, place and person. Recent memory was intact. Deep tendon reflexes were absent in the upper limbs, but knee jerks in the lower extremities were present, ankle jerks were absent. There was a diminished sensorium to pin prick and vibration, which is like stocking and gloves on hands which is suggestive of diabetic neuropathy. Diagnosis: impression was uncontrolled diabetes Type II and diabetic neuropathy. (Page 51)

In the instant, this Administrative Law Judge finds that the department has not established that claimant has medical improvement. Claimant does have uncontrolled diabetes, which is what the department approved him for. Claimant also does have permanent problems with his arms. Therefore, this Administrative Law Judge finds there has been no decrease in medical severity. Claimant does need medical assistance and his diabetes is still not controlled.

In the fifth step of the sequential evaluation, the trier of fact must consider whether any of the exceptions in 20 CFR 416.994(b)(3) and (b)(4) apply. If none of them apply, claimant's disability must be found to continue. 20 CFR 416.994(b)(5)(v).

The first group of exceptions to medical improvement (i.e., when disability can be found to have ended even though medical improvement has not occurred), found in 20 CFR 416.994(b)(3), are as follows:

- (1) Substantial evidence shows that the claimant is the beneficiary of advances in medical or vocational therapy or technology (related to claimant's ability to work).
- (2) Substantial evidence shows that the claimant has undergone vocational therapy (related to claimant's ability to work).
- (3) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques, claimant's impairment(s) is not as disabling as it was considered to be at the time of the most recent favorable medical decision.
- (4) Substantial evidence demonstrates that any prior disability decision was in error.

In examining the record, this Administrative Law Judge finds that the first group of medical exceptions to medical improvement do not apply.

The second group of exceptions is medical improvement, found at 20 CFR 416.994(b)(4), are as follows:

- (1) A prior determination was fraudulently obtained.
- (2) Claimant did not cooperate.
- (3) Claimant cannot be located.
- (4) Claimant failed to follow prescribed treatment which would be expected to restore claimant's ability to engage in substantial gainful activity.

After careful review of the record, this Administrative Law Judge finds that the second group of exceptions also do not apply.

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).

In the instant case, claimant was continuing to work under the Michigan Rehabilitation Services, hanging up clothes at ██████████ Industries. At all times relevant to this case, he was performing the same tasks. Therefore, this Administrative Law Judge finds there has not been an increase in the claimant's residual functional capacity. Even though he is able to work part time, the Medical Review Team did approve him anyway.

This Administrative Law Judge finds the department has not established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it proposed to cancel claimant's Medical Assistance and State Disability Assistance benefits based upon a lack of disability and medical improvement.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has failed to establish by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was no longer disabled for purposes of Medical Assistance and State Disability Assistance eligibility. There is no evidence in the file that claimant has medical improvement. From the time that the Medical Review Team approved claimant for Medical Assistance, he had uncontrolled diabetes. His condition remains uncontrolled diabetes and diabetic neuropathy even though he does retain Medicaid benefits.

Accordingly, the department's decision must be REVERSED. The department is ORDERED to reinstate claimant's Medical Assistance and State Disability benefit cases to the date of closure.

