

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.: 2008-25536
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
October 27, 2008
Gratiot County DHS

ADMINISTRATIVE LAW JUDGE: Linda Steadley Schwarb

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 October 27, 2008. The claimant appeared and testified. Following the hearing, the record was kept open for the receipt of additional medical evidence. No additional documents were submitted.

ISSUE

Did the Department of Human Services (DHS or department) properly determine that claimant is no longer "disabled" for purposes of the Medical Assistance (MA-P) and the 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) Claimant has been an ongoing recipient of SDA benefits based upon disability based on an application of July 26, 2007.

- 2) Claimant has been an ongoing recipient of MA-P based upon a January 24, 2008 application.
- 3) On June 6, 2008, the department notified claimant of its intent to terminate his ongoing MA-P and SDA benefits effective June 18, 2008 based upon the belief that claimant no longer met the requisite disability criteria.
- 4) On June 17, 2008, claimant filed a timely hearing request to protest the department's determination.
- 5) Thereafter, the department deleted its proposed negative action pending the outcome of the instant hearing.
- 6) Claimant, age 28, has a 10th grade education.
- 7) Claimant last worked in [REDACTED] as a metal machinist. Claimant has also worked as a cook, dishwasher, cashier, and payroll clerk as well as a laborer and maintenance person. Claimant's relevant work history consists exclusively of unskilled work activity.
- 8) On [REDACTED], claimant was found to have a large protruded free fragment of disk material at L4-5 with incapacitating pain. He underwent a minimal diskectomy.
- 9) On [REDACTED], imaging studies indicated that claimant suffered from a recurrent disc herniation at L4-L5. He underwent a decompressive laminectomy and instrumented spinal fusion.
- 10) On [REDACTED], claimant underwent right inguinal hernia repair.
- 11) Claimant has had no further hospitalizations.
- 12) Claimant suffers from morbid obesity and chronic low back pain.

- 13) Claimant has severe limitations upon his ability to walk or stand for prolonged periods of time as well as lifting extremely heavy objects. Claimant's limitations have lasted or are expected to last 12 months or more.
- 14) When comparing current medical documentation with past documentation, it is found that medical improvement of claimant's condition has occurred as there has been a decrease in the severity of claimant's impairments as shown by changes in symptoms, signs, and/or medical findings.
- 15) Medical improvement of claimant's condition is related to claimant's ability to do work as there has been an increase in claimant's residual functional capacity to do basic work activities.
- 16) Claimant's current complaints and allegations concerning his impairment and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who, at the very least, has the physical and mental capacity to engage in simple, unskilled, sedentary work activities on a regular and continuing basis.

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).

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 CFR 416.905

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, claimant is not currently working. Accordingly, claimant may not be disqualified for MA at this step in the sequential evaluation process.

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’s impairment(s) is not a “listed impairment” nor equal to a listed

impairment. Accordingly, the sequential evaluation process must continue.

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 undersigned Administrative Law Judge, after comparing past medical documentation with current medical documentation, finds that there has been medical improvement. Claimant underwent a minimal diskectomy at L4-L5 on [REDACTED]. On [REDACTED], he underwent a decompressive laminectomy and instrumented spinal fusion at L4-L5. Thereafter, on [REDACTED], claimant underwent repair of a right inguinal hernia. Claimant had no further hospitalizations. On [REDACTED], claimant's treating neurosurgeon indicated that claimant was making slow and gradual progress. He noted that claimant had good strength in his extremities and was stable. The treating neurosurgeon indicated that claimant was "coming along relatively well." The medical records supports a finding that claimant had achieved medical improvement.

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 an increase in claimant's residual functional capacity based on the impairment that was present at the time of the most favorable medical determination. As indicated, claimant's treating neurosurgeon indicated that claimant was making progress and that he had good strength in his extremities. Claimant was described as being stabled and "coming along relatively well." Thus, this Administrative Law Judge finds that claimant's medical improvement is related to claimant's ability to do work. 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 that claimant's morbid obesity and chronic low back pain continued to significantly impact his ability to walk or stand for prolonged periods of time and lift extremely heavy objects. See 20 CFR 416.921.

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. In this case, claimant's relevant work required the

ability to walk or stand for prolonged periods of time and/or lift heavy objects. The record does not support a finding that claimant is, at this time, capable of engaging in such work activities.

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 Administrative Law Judge finds that claimant is capable of the physical and mental activities required to perform simple, unskilled sedentary work activities on a regular and continuing basis. Sedentary work is defined as follows:

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).

There is insufficient objective medical evidence, signs, and symptoms to support a determination that claimant is incapable of performing the physical and mental activities necessary for a wide range of sedentary work. Claimant has had no hospitalizations since his hernia repair in [REDACTED]. [REDACTED] The records suggest that claimant's lumbar fusion, which was performed in [REDACTED], has adequately progressed. Following the hearing, claimant was given an opportunity to submit additional medical evidence and failed to do so. After review of claimant's medical records, claimant has failed to establish limitations which would compromise his ability to perform a wide range of sedentary work activities on a regular and continuing basis. See Social Security Ruling 83-10. The record fails to support the position that claimant is incapable of sedentary work activities.

Considering that claimant, at age 28, is a younger individual, has a 10th grade education, had an unskilled work history, and has a sustained work capacity for sedentary work, the

undersigned finds that claimant's impairments do not prevent him from doing other work. See 20 CFR, Part 404, Subpart P, Appendix 2, Table 1, Rule 201.24. Accordingly, the undersigned must find that claimant is no longer disabled for purposes of MA.

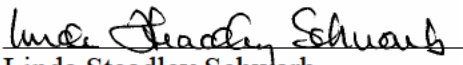
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon 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 Item 261. In this case, there is insufficient medical evidence to support a finding that claimant continues to be incapacitated or unable to work under SSI disability standards. Therefore, the undersigned finds that claimant is no longer disabled for purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services properly determined that claimant is no longer "disabled" for purposes of the Medical Assistance and State Disability Assistance programs.

Accordingly, the department's determination in this matter is hereby AFFIRMED.


Linda Steadley Schwarb
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 10/22/09

Date Mailed: 10/23/09

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 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.

LSS/dj

cc:

