

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: 2008-27860

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 4, 2009

Lenawee County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 Wednesday, March 4, 2009. The claimant personally appeared and testified on his own behalf.

ISSUE

Did the department properly determine that the claimant has not established continued eligibility for disability under the Medical Assistance (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) On July 12, 2006, the claimant applied for MA-P, retroactive MA-P, and SDA.
- (2) On August 3, 2006, the Medical Review Team (MRT) approved the claimant for MA-P, retroactive MA-P, and SDA with a medical review requested July 2008 stating that the claimant's impairments meets/equals Social Security Listing 1.03. The claimant was approved based on pain in the lower extremities secondary to an injury and surgeries.
- (3) On July 29, 2008, the MRT denied the claimant MA-P and SDA based on medical improvement resulting in the claimant not being eligible for continued eligibility.
- (4) On July 31, 2008, the department caseworker sent the claimant a notice that his application was denied.
- (5) On August 5, 2008, the department received a hearing request from the claimant, contesting the department's negative action.
- (6) On August 26, 2008, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA-P, retroactive MA-P, and SDA eligibility for the claimant. The SHRT report reads in part:

The claimant is alleging disability due to leg injuries and gallstones. The claimant is 55 years old and has a high school education with a history of unskilled work. This is a medical review of an August 2006 MRT approval based on Listing 1.03. The claimant does not meet applicable Social Security Listing 1.02 and 1.03. The claimant is capable of performing other work at the medium level per 20 CFR 416.967(c) under Vocational Rule 203.14.

The MRT decision of August 2006 was made in error as Listing 1.03 or any other listing was never met or equaled. At that time, the evidence was sufficient to deny to medium work. Currently, the claimant is capable of performing medium work. There is no evidence of a disabling mental impairment.

(7) During the hearing on March 4, 2009, the claimant requested permission to submit additional medical information that needed to be reviewed by SHRT. Additional medical information was received from the local office on March 6, 2009 and forwarded to SHRT for review on March 30, 2009.

(8) On April 7, 2009, the SHRT considered the newly submitted objective medical evidence in making its determination of MA-P and SDA. The SHRT report reads in part:

The claimant is alleging disability due to leg injuries and gallstones. The claimant is 56 years old and has a high school education with a history of unskilled work. This is a medical review of an August 2006 MRT approval based on Listing 1.03.

The claimant did not meet applicable Social Security Listing 1.02 and 1.03. The claimant is capable of performing other work that is medium under 20 CFR 416.967(c) under Vocational Rule 203.14. An MRI dated [REDACTED] of the thoracic and lumbar spine showed mild disc bulging at L4/5 and diffuse bulging at L5/S1 without evidence of major neural encroachment. Office notes showed tender lumbar spinous processes and bilateral lower paraspinal muscle tenderness. There was no evidence of neurological abnormalities.

The MRT decision of August 2006 was made in error as Listing 1.03 or any other listing was never met or equaled. At that time, the evidence was sufficient to deny to medium work. The claimant is currently capable of medium work. There was no evidence of a disabling mental impairment.

(9) The claimant is a 56 year-old man whose date of birth is [REDACTED]. The claimant is 6' 3" tall and weighs 210 pounds. The claimant has lost 20 pounds in the past year, but does not know why. The claimant has a high school diploma where he can read and write and do basic math. The claimant was last employed as a heavy motor repair person in April 2002.

(10) The claimant's alleged impairments are degenerative disc disease and chronic pain. The claimant previously had gallstones, but they have been removed and are no longer considered an impairment to working since his surgery as stated by the claimant.

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).

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 this case, the claimant is not substantially gainfully employed and has not worked since April 2002. Therefore, the claimant 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). In this case, the claimant’s impairments or combination of impairments do not meet or equal the severity of an impairment listed in Appendix 1. Therefore, the claimant is disqualified from receiving disability at Step 2.

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 claimant has had medical improvement resulting in a decrease in medical severity. The claimant did have gallstones, but subsequently had surgery and had them removed. During the hearing, the claimant stated that since his surgery that his gallstones are no longer an issue.

On [REDACTED], the claimant's treating physician submitted a progress report on the claimant. The claimant was seen for a re-check where he had a normal physical examination except that the claimant's treating physician noted tender lumbar spinous processes and bilateral lower paraspinal muscle tenderness. The claimant was diagnosed with lumbar radiculopathy and prescribed medication. (Department Exhibit 2-3)

On [REDACTED], the claimant was given an MRI of the thoracic and lumbar spine at [REDACTED]. The radiologist's impression was that the claimant had multiple mild chronic vertebral body compression deformities without significant neural encroachment in the thoracic spine. In the lumbar spine there was facet spondylosis throughout the region examined without evidence of major neural encroachment. (Department Exhibit 161-162)

On December 5, 2008, the claimant was seen by his treating physician where his chief complaint was a follow-up evaluation for back and leg pain. The claimant had a normal physical examination except that the treating physician noted tender lumbar spinous processes and

bilateral lower paraspinal muscle tenderness. The claimant had unspecified asthma where he was prescribed medication and lumbar radiculopathy where he was prescribed medication.

(Department Exhibit 7-9)

On [REDACTED], the claimant's treating physician submitted a progress note on behalf of the claimant. The claimant was seen for a follow-up evaluation and a re-check and medication refills. The claimant had a normal physical examination except that the claimant's treating physician noted that the claimant had tender lumbar spinous processes and bilateral lower paraspinal muscle tenderness. The claimant had shoulder pain. (Department Exhibit 16-17)

At Step 3, the objective medical evidence on the record indicates that the claimant has had medical improvement. The claimant had surgery for his gallstones. The claimant does have back pain and lumbar radiculopathy, but from his MRI dated [REDACTED] there was no significant neural encroachment in the thoracic and lumbar spine. The claimant's physical examinations by his treating physician have been normal except for tenderness in his back and muscle tenderness as cited on [REDACTED]. Therefore, the claimant is disqualified from receiving disability at Step 3.

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 the claimant's condition as presented at the time of his most favorable determination. The claimant had gallstones that required surgery, which he had and no longer considers his gallstones an impairment to work. The claimant does have chronic pain from his degenerative disc disease, but the claimant has multiple mild chronic vertebral body compression deformities

without significant neural encroachment in the thoracic spine and facet spondylosis for the region examined without evidence of major neural encroachment in the lumbar spine. As a result, the claimant's medical improvement is related to his ability to perform work. (See analysis in Steps 1, 2, and 3 above.)

At Step 4, this Administrative Law Judge finds that the claimant's medical improvement is related to his ability to do work. The claimant had gallstones that required surgery which he had and no longer considers his gallstones an impairment to work. The claimant does have chronic pain from his degenerative disc disease, but the claimant has multiple mild chronic vertebral compression deformities without significant neural encroachment in the thoracic spine and facet spondylosis for the region examined without evidence of major neural encroachment in the lumbar spine. As a result, the claimant's medical improvement is related to his ability to perform work. (See analysis in Steps 1, 2, and 3 above.)

If there is a finding of medical improvement related to the claimant's ability to perform work, the trier of fact is to move to Step 6 in the sequential evaluation process. The Administrative Law Judge finds that the claimant's medical improvement is related to his ability to do work.

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 the claimant retains the residual functional capacity to perform medium work. Therefore, the claimant is disqualified from receiving disability at Step 6.

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.

The claimant does not have a driver's license because it's suspended for drunk driving. The claimant does cook once or twice a month, but does have a problem standing. The claimant does grocery shop once a month, but has a problem standing and lifting heavy items. The claimant does not clean his own home, but does do basic housework. The claimant does mow the yard with a riding tractor. His hobby is building and flying remote control planes. The claimant felt his condition has worsened in the past year because he can't stand, lift, and walk.

The claimant wakes up between 4:00 a.m. and goes to bed between 11:00 p.m. to 3:00 a.m. He sits around the house and watches TV. He does listen to the radio.

The claimant felt he could walk and stand for ten minutes. The longest he felt he could sit was two hours. The heaviest weight the claimant felt he could carry was 20 pounds. His level of pain on a scale of 1 to 10 without medication was a 10 that decreases to a 6 with medication.

The claimant smokes eight to twelve cigarettes a day. He stopped drinking 3-1/2 to 4 years ago where before he was an alcoholic. The claimant does not or has ever taken illegal or illicit drugs. The claimant stated that there was no work that he felt he could do.

In this case, the Administrative Law Judge finds that the claimant retains the capacity to perform at least medium work. The claimant's past work was as a heavy motor repair person was performed at the heavy level. The claimant has degenerative disc disease where he has chronic pain, body compression deformities, and facet spondylosis, but the claimant does not have any

evidence of major neural encroachment in the lumbar or thoracic spine. The claimant should be able to perform medium work. The claimant had gallstones where he had them removed from surgery and testified that that is no longer an impairment that prevents him from working. Therefore, the claimant does not retain the capacity to perform his past relevant work and is not denied at Step 7.

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 claimant does retain the residual functional capacity to perform medium work under Medical-Vocational Rule 203.14. (See prior analysis in Steps 1, 2, 3, 4, 6, and 7.) Therefore, the claimant is disqualified from receiving continued Medical Assistance benefits because he does have medical improvement. The record does not establish the claimant is unable to work because he does have medical improvement.

The department's Program Eligibility Manual provides the following policy statements and instructions for caseworkers regarding the SDA program.

DISABILITY – SDA

DEPARTMENT POLICY

SDA

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older.

Note: There is no disability requirement for AMP. PEM 261, p. 1.

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.

Other Benefits or Services

Persons receiving one of the following benefits or services meet the SDA disability criteria:

- . Retirement, Survivors and Disability Insurance (RSDI), due to disability or blindness.
- . Supplemental Security Income (SSI), due to disability or blindness.
- . Medicaid (including spend-down) as blind or disabled if the disability/blindness is based on:
 - .. a DE/MRT/SRT determination, or
 - .. a hearing decision, or
 - .. having SSI based on blindness or disability recently terminated (within the past 12 months) for financial reasons.

Medicaid received by former SSI recipients based on policies in PEM 150 under "**SSI TERMINATIONS,**" INCLUDING "**MA While Appealing Disability Termination,**" does not qualify a person as disabled for SDA. Such persons must be certified as disabled or meet one of the other SDA qualifying criteria. See "**Medical Certification of Disability**" below.

- . Michigan Rehabilitation Services (MRS). A person is receiving services if he has been determined eligible for MRS and has an active MRS case. Do not refer or advise applicants to apply for MRS for the purpose of qualifying for SDA.

- . Special education services from the local intermediate school district. To qualify, the person may be:
 - .. attending school under a special education plan approved by the local Individual Educational Planning Committee (IEPC); **or**
 - .. not attending under an IEPC approved plan but has been certified as a special education student **and** is attending a school program leading to a high school diploma or its equivalent, **and** is under age 26. The program does not have to be designated as “special education” as long as the person has been certified as a special education student. Eligibility on this basis continues until the person completes the high school program or reaches age 26, whichever is earlier.
- . Refugee or asylee who lost eligibility for Social Security Income (SSI) due to exceeding the maximum time limit PEM, Item 261, pp. 1-2.

Therefore, the claimant is disqualified from receiving continued SDA benefits because he does have medical improvement. The record does not that the claimant is unable to work for a period exceeding 90 days, and the claimant does not meet the disability criteria for continued SDA.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established that it was acting in compliance with department policy when it denied the claimant's medical review for MA-P and SDA by determining the claimant was no longer eligible for continued disability benefits. The claimant should be able to perform a wide range of medium work. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is **AFFIRMED**.

/s/

Carmen G. Fahie
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 9, 2009

Date Mailed: July 10, 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 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.

CGF/vmc

cc:

