

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: 2008-11960
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 4, 2008
Ottawa County DHS

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

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 three-way telephone conference hearing was held on June 4, 2008. Claimant was represented at the administrative hearing by attorney [REDACTED].

ISSUE

Did the Department of Human Services (DHS) properly close claimant's State Disability Assistance (SDA) case at review?

FINDINGS OF FACT

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

- (1) Prior to the issue of review herein, claimant was approved SDA by MRT pursuant to an application in March of 2007.
- (2) The original approval by MRT in March of 2007 set the review for August, 2007.

- (3) At review, on 11/8/07, MRT denied continuing SDA eligibility.
- (4) On 11/27/07, the DHS issued notice of SDA case closure on the grounds that claimant no longer meets the disability criteria.
- (5) On 1/3/08, claimant filed a hearing request. The negative action took place.
- (6) On 4/15/08, the State Hearings Review Team (SHRT) denied claimant continuing SDA eligibility.
- (7) Claimant testified under oath that he has an SSI application pending with the Social Security Administration (SSA) as of March, 2007. As of February, 2009, claimant has not informed the DHS that he has received an adverse decision denying his claim.
- (8) As of the date of review, claimant was a 54 year-old male standing 5' 9" tall and weighing 185 pounds. Claimant has a high school diploma.
- (9) Claimant does not smoke, consume alcohol, or use illicit drugs.
- (10) Claimant does not have a history of alcohol, nicotine, or drug abuse.
- (11) It is unknown if claimant has a driver's license or drives an automobile.
- (12) Claimant is not currently working. Claimant last worked in October, 2006 when he suffered a stroke which is the basis of the SDA approval. Claimant's work history is working as an assembler-production worker in manufacturing for 25 years.
- (13) Claimant alleges disability on the basis of a stroke, diabetes, hypertension, and high cholesterol.
- (14) Claimant suffered a left-sided central vascular accident--a stroke in October, 2006. At the time of the stroke, claimant needed assistance with his activities of daily living, a home program to coordinate activities. Claimant had impaired sensory integrity, expressive aphasia, memory loss, speech problems, left-sided weakness, lack of coordination, loss of muscle

control, loss of strength, difficulties with balance., and severe limitations as to pace and concentration.

(15) A DHS-49 completed 3/28/07 indicates that claimant can stand and/or walk at least 2 hours in an 8-hour workday and sit for about 8. Claimant can occasionally lift up to 20 pounds and cannot use his left hand/arm for repetitive actions. Claimant has no mental limitations. See Exhibit 20.

(16) An updated 49 completed 7/16/07, shows claimant's condition worsening: Claimant can stand and/or walk less than 2 hours in an 8-hour workday. Claimant can occasionally lift less than 10 pounds and never lift 10 pounds or more. Claimant has difficulty writing. Exhibits 29 and 30.

(17) A 12/18/2006 claimant assessment indicates claimant continues to have problems with left upper extremity as to sensation, coordination and strength. Exhibit 17.

(18) A 3/19/2007 assessment indicates improvement in independence with bed mobility, ambulation, and ADLs. Claimant could not return to his job without restrictions as lifting up to 50 pounds would be unsafe. Exhibit 18.

(19) Claimant's updated activities of daily living form indicates that many problems he had experienced at the time of the stroke have not improved.

(20) A 9/17/2007 hospital note indicates that claimant is independent with ADLs but has difficulty due to decreased coordination on the left side. Exhibit 41.

(21) An October 17, 2007 evaluation by [REDACTED], states that claimant has some speech impediment, numbness of the left arm and foot, trouble dressing. Claimant walks with a left-sided limp without the use of an assistive device. Claimant has difficulty when squatting, impaired left arm and left hand, diminished grip strength, cannot form a full fist, unable to button clothing, open a door, pick up a coin, and experiences difficulty with

taking off his jacket. Claimant also has diminished range of motion of the left shoulder.

Exhibits 40-45.

(22) A [REDACTED] [REDACTED] evaluation indicates that claimant is not a candidate for job placement services with MRS. The evaluation states in part that claimant suffered expressive aphasia, memory loss, speech problems, left-sided weakness, lack of coordination, loss of muscle control, loss of strength, difficulty with balance. Also experiencing muscle stiffness, physical restrictions including standing, walking, climbing and lifting abilities. Exhibits 49 and 50.

(23) An affidavit signed by claimant's physician, [REDACTED] indicates claimant has suffered a left-sided stroke--central nervous vascular accident 11.04; and continues with left-sided weakness, lack of coordination, loss of muscle control, loss of strength, difficulties with balance. Claimant also experiences limitations as to pace and concentration. Continues to experience difficulty with getting up from a prone position, limited ability to stand, walk, climb, and lift. Claimant does not have good use of his left hand or arm to grasp, hold and turn objects.

(24) An administrative hearing was held in this matter on 6/4/08. On 8/5/08, the undersigned Administrative Law Judge took a scheduled extended leave of absence and returned to full-time work on 2/2/2009. The record was not held open in this matter.

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).

Statutory authority for the SDA program states in part:

- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

These federal guidelines state in part:

"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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed

impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

At application claimant has the burden of proof pursuant to:

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

...Medical reports should include --

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as sure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

As noted in the Findings of Fact, this case is a review case. The burden is on the department to show improvement. Federal guidelines which are used as guides for SDA are very specific with regards to the analysis at review. These guidelines state in part:

...the medical evidence we will need for a continuing disability review will be that required to make a current determination or decision as to whether you are still disabled, as defined under the medical improvement review standard.... 20 CFR 416.993.

...In some instances, such as when a source is known to be unable to provide certain tests or procedures or is known to be nonproductive or uncooperative, we may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that your disability has ended, we will develop a complete medical history covering at least the 12 months preceding the date you sign a report about your continuing disability status.... 20 CFR 416.993(b).

...If you are entitled to disability benefits as a disabled person age 18 or over (adult) there are a number of factors we consider in deciding whether your disability continues. We must determine if there has been any medical improvement in your impairment(s) and, if so, whether this medical improvement is related to your ability to work. If your impairment(s) has not so medically improved, we must consider whether one or more of the exceptions to medical improvement applies. If medical improvement related to your ability to work has not occurred and no exception applies, your benefits will continue. Even where medical improvement related to your ability to work has occurred or an exception applies, in most cases, we must also show that you are currently able to engage in substantial gainful activity before we can find that you are no longer disabled. 20 CFR 416.994(b).

Medical improvement. Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued 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 your impairment(s).... 20 CFR 416.994(b)(1)(i).

Medical improvement not related to ability to do work. Medical improvement is not related to your ability to work if there has been a decrease in the severity of the impairment(s) as defined in paragraph (b)(1)(i) of this section, present at the time of the

most recent favorable medical decision, but no increase in your functional capacity to do basic work activities as defined in paragraph (b)(1)(iv) of this section. If there has been any medical improvement in your impairment(s), but it is not related to your ability to do work and none of the exceptions applies, your benefits will be continued.... 20 CFR 416.994(b)(1)(ii).

Medical improvement that is related to ability to do work. Medical improvement is related to your ability to work if there has been a decrease in the severity, as defined in paragraph (b)(1)(i) of this section, of the impairment(s) present at the time of the most recent favorable medical decision **and** an increase in your functional capacity to do basic work activities as discussed in paragraph (b)(1)(iv) of this section. A determination that medical improvement related to your ability to do work has occurred does not, necessarily, mean that your disability will be found to have ended unless it is also shown that you are currently able to engage in substantial gainful activity as discussed in paragraph (b)(1)(v) of this section.... 20 CFR 416.994(b)(1)(iii).

In this case, as already noted, at review, federal regulations place the burden of proof on the department to show improvement. This is the first prong. The next prong of the review standard requires a showing that the improvement is related to an individual's ability to engage in work or substantial gainful activity.

A review of the evidence only indicates that there is one piece of evidence which would seem to indicate no improvement--the two 49s. In fact, based on the new weight restrictions and changes in claimant's ability to engage in writing skills, claimant's condition has worsened. However, taking all the medical evidence as a whole, this ALJ finds that there has been improvement. In fact, claimant has by self report indicated to a number of medical professionals that his condition has improved. Thus, the first prong is shown--claimant has improved.

The next prong as always noted, is that the department must show that the improvement is related to the individual's ability to engage in work.. After careful review of the substantial and credible evidence on the whole record, this ALJ finds that claimant's improvement is not related to his ability to engage in work or substantial gainful activity. Numerous documents

indicate that claimant's severe restrictions impede him from returning to his past work in production. Claimant often lifted up to 50 pounds. Claimant cannot engage in this type of work. Claimant would be restricted to sedentary work. However, based upon the federal guidelines, the physical restrictions which do not allow claimant to engage with the left side of his body in repetitive actions such as pushing, pulling, and fine manipulation, claimant could not engage in a full range of sedentary work. Thus, for these reasons, and for the reasons stated above, improvement is not shown with regards to the ability of claimant to engage in work and thus, the department's denial at review is reversed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were incorrect.

Accordingly, the department's decision is REVERSED. The department is ORDERED to make a determination if claimant meets the non-medical criteria for SDA. If so, the department is ORDERED to reopen an SDA case from the time of closure and issue supplemental benefits to claimant. The department is ORDERED to review this case in accordance with its usual policy and procedure.

/s/ _____
Janice G. Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 13, 2009

Date Mailed: February 17, 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 mailing date of the rehearing decision.

JGS/cv

cc:

