

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: 2008-18794
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 28, 2008
Muskegon 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 Tuesday, October 28, 2008. The claimant personally appeared and testified with his neighbor and [REDACTED], as a witness.

ISSUE

Did the department properly determine that the claimant has not established continued eligibility for disability under the Medical Assistance (MA) program?

FINDINGS OF FACT

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

(1) The claimant was a recipient of MA benefits with the latest medical review required in February 2008.

(2) On April 17, 2008, the Medical Review Team (MRT) denied the claimant's medical review of MA stating that the claimant was no longer disabled and eligible for continued eligibility MA disabled per 20 CFR 416.994.

(3) On April 24, 2008, the department caseworker sent the claimant a notice that his application was denied.

(4) On April 30, 2008, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On June 23, 2008, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA eligibility for the claimant. The SHRT report reads in part:

The claimant is 53 years old and alleges disability to/or has received treatment for laryngeal cancer, mood problems, and alcohol use. The claimant has a limited education and a history of skilled and unskilled work. This a medical review of a previously claim.

The claimant was previously approved based on a condition of laryngeal cancer and inability to produce speech. The claimant has successfully completed treatment without recurrence of cancer. He is able to use a mechanical voice device to be understood and to communicate. The claimant has demonstrated significant improvement in the conditions for which he was previously approved. Mental health treatment records indicate the claimant has some mood problems and had a recurrence of alcohol abuse. His condition may make skilled work difficult. Medical opinion was considered in light of CFR 416.927. The evidence in file does not demonstrate any other impairment that would pose a significant limitation.

The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. This is a medical review which demonstrated medical improvement. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of unskilled, light work that does not require the need for constant communication. Therefore, based on the claimant's vocational profile (closely approaching advanced age, limited

education, and a history of unskilled and skilled work), MA-P is denied using Vocational Rule 202.17 as a guide.

(6) During the hearing on October 28, 2008, 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 October 28, 2008 and forwarded to SHRT for review on October 31, 2008.

(7) On November 12, 2008, the SHRT considered the newly submitted objective medical evidence in making its determination of MA-P and retroactive MA-P. The SHRT report reads in part:

The claimant is alleging disability due to laryngeal cancer, mood disorder, and alcoholism. He is 53 years old and has a limited education with a history of unskilled work. The claimant did not meet applicable Social Security Listings 12.04 and 13.02. The claimant is capable of performing other work that is light work and unskilled work per Vocational Rule 202.10.

(8) The claimant is a 54 year-old man whose date of birth is [REDACTED]. The claimant is 5' 7" tall and weighs 165 pounds. The claimant completed the 9th grade of high school. The claimant was Special Education in Reading. The claimant cannot read and write, but can do basic math. The claimant has a pertinent work history as a welder where he was last employed in 1999.

(9) The claimant's alleged impairments are sciatica nerve pain, voicebox mechanical device, post traumatic stress disorder, anxiety, and depression.

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).

"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).

...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).

...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).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...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 blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...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 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).

...Evidence that you submit or that we obtain may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

...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).

...Your residual functional capacity is what you can still do despite limitations. If you have more than one impairment, we will consider all of your impairment(s) of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based on all of the relevant evidence.... 20 CFR 416.945(a).

...This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s)... 20 CFR 416.945(a).

...In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence.... 20 CFR 416.929(a).

...In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you... We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work.... 20 CFR 416.929(a).

If you have more than one impairment, we will consider all of your impairments of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. This assessment of your capacity for work is not a decision on whether you are disabled but is used as a basis for determining the particular types of work you may be able to do despite your impairment. 20 CFR 416.945.

...When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work. 20 CFR 416.945(b).

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

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 1999. 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.

The objective medical evidence on the record further substantiates the following:

On [REDACTED], the claimant came to the office without an appointment drunk and/or high where eyes were not focusing. The claimant had an injury or two on his face possibly from

falling. The claimant was angry and oppositional stating the he know had insurance. The claimant was asked to reschedule if he had insurance or to go to [REDACTED] if he didn't.

On [REDACTED], the claimant was seen by [REDACTED]. The claimant cancelled his appointment stating that he was no longer eligible for Medicaid where the claimant was called back stating that the claimant couldn't be seen because he didn't have coverage for today. (Department Exhibit M)

On [REDACTED], the claimant was given a Behavioral Health Clinical Assessment at [REDACTED]. The claimant was severely impaired in a few areas and moderately impaired in a few other areas. The claimant was diagnosed with mood disorder due to medical condition with adjustment disorder. The claimant has a reading problem. He was given a GAF of 65. (Department Exhibit H-L)

On [REDACTED], the claimant was seen by his treating oncologist. The claimant overall was feeling well and was asymptomatic. The claimant's lungs were clear, with a regular heart beat. The abdomen was soft with active bowel sounds. There was no hepatosplenomegaly. The claimant's trach site was unremarkable, but he did have some yellowish sputum. The claimant had squamous cell carcinoma of the larynx, Stage 3, where he was status post radiation therapy and chemotherapy. The claimant's last chemotherapy was completed on [REDACTED] where there was no evidence of recurrent disease. (Department Exhibit 287)

On [REDACTED], the claimant was seen at [REDACTED] for a physical examination. The impression was squamous cell carcinoma of the larynx with radiation burns. The claimant did have anxiety and depression. The claimant was alert and oriented x3 and in no acute distress with clear speech. (Department Exhibit 492-495)

In this case, the claimant has had medical improvement resulting in a decrease in medical severity. The claimant was successfully treated for laryngeal cancer even though it resulted in him having his voicebox removed and having to use a mechanical device to communicate. The claimant's chemotherapy was completed in [REDACTED]. The claimant's lungs were clear with his heart having regular rhythm and his abdomen being soft with active bowel sounds. The claimant's trach site was unremarkable even with some yellowish sputum. The claimant was being treated for his mental impairments. 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 medical improvement. The claimant can communicate using his mechanical device. He would be prevented from performing skilling, detailed, work, but the claimant should be able to perform simple, unskilled, light-to-medium work.

At Step 4, this Administrative Law Judge finds that the claimant's medical improvement is related to his ability to do work. The claimant finished his chemotherapy in [REDACTED] with no recurrence. The claimant did have to have his voicebox removed and required a mechanical device in order to speak. The claimant was in treatment and taking medication for his mental impairments, but stopped treatment when he was denied. The claimant did have an option of continuing with [REDACTED] or another provider. Thus, this Administrative Law Judge finds that claimant's medical improvement is related to his 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. The Administrative Law Judge finds that the claimant's medical improvement is related to the claimant's 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 does have a severe impairment. The claimant had laryngeal cancer that required him to have his voicebox removed and insertion of a mechanical in order for the claimant to communicate. The claimant was also in therapy and taking medication for his mental impairments. Therefore, the claimant is not 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 and does not drive as a result of a drunken driving incident. The claimant cooks 2 times a day with no problem. The claimant grocery shops once a month, but gets nervous and requires transportation. The claimant does clean his own home by vacuuming, picking up, and doing laundry. The claimant doesn't do any outside work. The claimant's hobbies are movies, watching TV, and his cat. The claimant felt his condition has worsened in the past year because of a hernia, nerve damage, his teeth, and COPD. The claimant stated that he is taking medication and in therapy for his mental impairments.

The claimant wakes up at 9:00 a.m. He has coffee and cereal. He takes his medication. He goes for a walk. The claimant goes to the center during the day. The claimant goes to bed between 9:00 to 10:00 p.m.

The claimant felt he could walk 4-5 blocks. The longest he felt he could stand was one hour. The longest he felt he could sit was 3-4 hours. The heaviest weight the claimant felt he could carry was 10 pounds. The claimant stated that his level of pain on a scale of 1 to 10 without medication was an 8 that decreases to a 6 with medication.

The claimant smokes 1-2 cigarettes a day. The claimant drinks 2-3 beers in a day. 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 simple, unskilled, light-to-medium work. The claimant's past work was as a welder, which is his pertinent work history and is performed at the light-to-medium level in the national economy. The claimant can perform his past relevant work as a welder as long as it's simple, unskilled, light-to-medium work. Therefore, the claimant does retain the capacity to perform his past relevant work and is 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 light-to-medium work under Medical-Vocational Rule 202.10 and 203.18. Therefore, the claimant is disqualified from receiving continued Medical Assistance benefits because the claimant has had medical improvement. The record does not establish that the claimant is unable to work for a period

exceeding one year and the claimant does not meet the disability criteria for continued Medical Assistance.

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 to determine the claimant was no longer eligible for continued disability benefits. The claimant should be able to perform a wide range of simple, unskilled, light-to-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: May 11, 2010

Date Mailed: May 11, 2010

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.

2008-18794/CGF

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cc:

