

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: 2008-20985
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 27, 2008
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jay W. Sexton

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 in Highland Park on August 27, 2008. Claimant personally appeared and testified under oath.

The department was represented by Aspacia Fisher (Medical Contact Specialist).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence to the State Hearing Review Team (SHRT). The record was closed on August 27, 2008 and claimant's medical evidence was sent to SHRT on that day. Claimant waived the timeliness requirement so that his new medical evidence could be reviewed by SHRT. After a second SHRT disability-denial, the Administrative Law Judge issued the decision and order below.

ISSUE

Did the department establish medical improvement that enables claimant to perform substantial gainful activity for MA-P/SDA purposes?

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 is a current MA-P/SDA recipient. The department proposed to close claimant's MA-P/SDA based on medical improvement. SHRT issued a decision on June 25, 2008 stating that the medical record established medical improvement and claimant was no longer eligible for MA-P/SDA.

(2) The original approval date for claimant's MA-P/SDA is May/2007. The basis for claimant's disability approval apparently was claimant's Stage IIIC colon cancer (surgically resected, chemotherapy cycles and neuropathy, secondary to chemo medication).

(3) Claimant's vocational factors are: age—49; education—did not complete high school; post-high school education—GED; work experience—assembly line worker for ██████████, car wash worker and maintenance/janitorial worker.

(4) Claimant has not performed Substantial Gainful Activity (SGA) since 1988 when he worked on the assembly line for ██████████. Claimant was incarcerated and during that time he worked as a porter, kitchen clean-up worker and janitor.

(5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (JUNE 25, 2008):

Claimant had surgically resected Stage IIIC colon cancer (p. 37). He was admitted in 3/2007 for his 10th of 12 planned chemotherapy cycles. However, because he was developing

neuropathy from one of his chemo medications, that part of the chemo could not be completed during his last infusions (p. 33).

A DHS-49 form, dated 3/2008, showed claimant had peripheral neuropathy and colorectal cancer. His exam was within normal limits, except for decreased sensation in the hands and feet (p. 17). However, the doctor indicated that claimant could never lift any weight and could not use either hand or arm for repetitive actions (p. 18).

ANALYSIS:

It is not clear if claimant's cancer is in remission or not. His functional limitations from the neuropathy are not really clarified. Claimant's breathing test showed severe limitations, but the tracings would suggest the findings were not best effort (pp. 8-9). Additional information would be helpful in evaluating this medical review.

The following objective medical evidence was considered:

(a) An [REDACTED] letter was reviewed. The physician provided the following diagnoses:

- (1) Colon cancer;
- (2) Status-post chemotherapy;
- (3) Thyroid disorder;
- (4) Sinusitis /SAR;
- (5) Asthma/COPD;
- (6) Bilateral senioustitis;
- (7) Hypoglycemia;
- (8) Neck pain with radiculopathy;
- (9) LBP with radiculopathy;
- (10) Bilateral CT;
- (11) Hyperlipidemia;
- (12) CHP;
- (13) Cardiac arrhythmia;
- (14) Fatigue;
- (15) Osteopenia;
- (16) Bilateral foot pain;
- (17) Bilateral knee pain;
- (18) Hypothyroidism;
- (19) Bipolar disorder;
- (20) Severe lower extremity weakness;
- (21) Severe low back pain;

- (22) Severe anxiety;
- (23) Insomnia.

The physician further states, in view of the above, claimant is totally disabled indefinitely.

(6) The objective medical evidence (claimant's testimony) shows that claimant was hospitalized in 2007 for treatment of his IIC colon cancer (chemotherapy). Furthermore, claimant was not able to complete the 12 planned chemotherapy cycles, due to neuropathy secondary to the chemotherapy.

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).

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).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...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.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments does not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...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).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

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

Medical evidence 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 the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

ABILITY TO DO SUBSTANTIAL GAINFUL ACTIVITY (SGA)

Under current MA-P/SDA policies, **the department has the burden of proof** to establish that claimant is now medically able to return to work. PEM 260/261.

Claimant's original approval appears to have been based on his surgically resected Stage IIC colon cancer, and the 12 planned chemotherapy cycles.

Claimant's physical condition has not clinically improved to the point that he is now able to work.

To the contrary, the medical records indicate that claimant's colon cancer is still a potentially life threatening condition. Claimant's 10th planned chemotherapy cycle had to be aborted because it was causing neuropathy in his hands and feet.

Since claimant was originally approved for benefits based on the surgically resected Stage IIC colon cancer, he continues to be eligible based on that diagnosis. In addition, claimant has developed neuropathy in his hands and feet due to his chemotherapy treatment. In addition, he continues to have bipolar disorder and severe anxiety, which disrupts his daily activities and interferes with his ability and willingness to obtain and hold a job.

Therefore, claimant is not, at this time, able to return to substantial gainful activity based on a combination of impairments (both non-exertional—bipolar disorder and anxiety and exertional—colon cancer and the side effects of his chemotherapy).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has **NOT** established medical improvement, as required by PEM 260 and 261.

Accordingly, the department's decision to close claimant's MA-P/SDA is, hereby,
REVERSED.

SO ORDERED.

/s/ _____
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: January 5, 2010

Date Mailed: January 6, 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 receipt 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.

JWS/sd

cc:

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