

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.: 2008-23213
Issue No.: 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
February 18, 2009
Macomb County DHS (12)

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 February 18, 2009. The claimant appeared and testified. Following the hearing, the record was kept open for receipt of additional medical evidence. Additional documents were received and reviewed.

ISSUE

Did the Department of Human Services (DHS or department) properly determine that claimant is no longer "disabled" for purposes of the State Disability Assistance (SDA) 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) Claimant has been an ongoing recipient of SDA benefits based upon an October 18, 2007 application.

- (2) On June 3, 2008, the department notified claimant that it intended to terminate his ongoing SDA benefits effective June 23, 2008 based upon the belief that claimant no longer met the requisite disability criteria.
- (3) On June 11, 2008, claimant filed a timely hearing request to protest the department's proposed negative action.
- (4) Thereafter, the department deleted its proposed negative action pending the outcome of the instant hearing.
- (5) Claimant, age 54, has a high school education.
- (6) Claimant last worked in September 2007 as a custodian. Claimant's relevant work history consists exclusively of unskilled work activities.
- (7) Claimant was involved in a motor vehicle accident in September 2007 and suffered a comminuted right humerus fracture. He underwent open reduction and internal fixation.
- (8) Claimant currently suffers from a healed fracture of the right humerus with residual radial nerve palsy, muscle atrophy, and wasting with restricted range of motion and function. Claimant also suffers from hypertension, obesity, chronic spastic colon, major depressive disorder, and post traumatic stress disorder.
- (9) When comparing currently medical documentation with documentation from the most recent Medical Review Team approval on December 11, 2007, it is found that medical improvement of claimant's condition has not occurred as there has been no decrease of the severity of claimant's impairments as shown by changes in symptoms, signs, and/or laboratory findings.

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).

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal Supplement Security Income (SSI) standards for at least 90 days. Other than the more limited 90 day duration, the department must use the same operative definition for “disabled” when considering eligibility for SDA as used for SSI under Title XVI of the Social Security Act. 42 CFR 435.540(a). Disability is defined as follows:

“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 SDA 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 impairments are not "listed impairments" nor equal to listed impairments. Accordingly, a 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, claimant was most recently approved for SDA benefits by the Medical Review Team on December 11, 2007. At that point, claimant was recovering from his recent comminuted right humerus following open reduction and internal fixation. As time passed,

claimant's fracture has healed. Unfortunately, he has continued to suffer with residual radial nerve palsy, muscle atrophy, and wasting with restricted range of motion and function. See EMG testing of [REDACTED]. On [REDACTED], claimant's treating orthopedic specialist diagnosed claimant with humerus fracture with radial nerve palsy. The physician indicated that claimant had limitation of motion as well as function of the upper extremity. The specialist indicated that he did not expect claimant to achieve significant improvement and that claimant would have permanent deficits. On [REDACTED], claimant's treating psychologist diagnosed claimant with major depressive disorder and post traumatic stress disorder. The psychologist opined that claimant suffered from marked limitation with regard to his ability to complete a normal work day and work week without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. The psychologist found claimant to be moderately limited in nearly all other categories of understanding and memory, sustained concentration and persistence, social interaction, and adaption. In this case, after comparing past medical documentation with current medical documentation, the undersigned finds that there has been no medical improvement.

In the fifth step of the sequential evaluation, the trier of fact must consider whether any of the exceptions in 20 CFR 416.994(b)(3) and (b)(4) apply. If none of them apply, claimant's disability must be found to continue. 20 CFR 416.994(b)(5)(v).

The first group of exceptions to medical improvement (i.e., when disability can be found to have ended even though medical improvement has not occurred), found in 20 CFR 416.994(b)(3), are as follows:

- (1) Substantial evidence shows that the claimant is the beneficiary of advances in medical or vocational therapy or technology (related to claimant's ability to work).

- (2) Substantial evidence shows that the claimant has undergone vocational therapy (related to claimant's ability to work).
- (3) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques, claimant's impairment(s) is not as disabling as it was considered to be at the time of the most recent favorable medical decision.
- (4) Substantial evidence demonstrates that any prior disability decision was in error.

In examining the record, this Administrative Law Judge finds that there is nothing to suggest that any of the exceptions listed above apply to claimant's case.

The second group of exceptions is medical improvement, found at 20 CFR 416.994(b)(4), are as follows:

- (1) A prior determination was fraudulently obtained.
- (2) Claimant did not cooperate.
- (3) Claimant cannot be located.
- (4) Claimant failed to follow prescribed treatment which would be expected to restore claimant's ability to engage in substantial gainful activity.

After careful review of the record, this Administrative Law Judge finds that none of the above mentioned exceptions apply to claimant's case. Accordingly, per 20 CFR 416.994, the undersigned concludes that claimant's disability for purposes of SDA must continue.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant continues to be "disabled" for purposes of the State Disability Assistance program.

Accordingly, the department's determination in this matter is **HEREBY, REVERSED**. The department is ordered to maintain claimant's eligibility for State Disability Assistance if he is otherwise eligible for program benefits. The department should review claimant's continued eligibility for program benefits in September 2009.

/s/

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

Date Signed: 07/30/09

Date Mailed: 07/31/09

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 the Circuit 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.

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