

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: 2008-2382

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 6, 2008

Van Buren County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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 March 6, 2008. Claimant personally appeared and testified.

ISSUE

Did the department properly propose to close claimant's Medicaid (MA) case at mandatory review in October, 2007?

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 married, 48-year-old high school educated male with a substance abuse history (IV heroin, marijuana and cocaine), who has not been employed since 2002 (Department Exhibit #1, pgs 43 and 286).

(2) Claimant has an unskilled work history in construction, janitorial and fast food restaurants (Department Exhibit #1, pgs 43 and 374).

(3) In 1999 and 2001, claimant had heart attacks; two stents subsequently were placed which alleviated his blockages (Department Exhibit #1, pgs 47, 259, 263, 274 and 374).

(4) Claimant stands approximately 6'0" tall and weighs approximately 220 pounds; he is right hand dominant (Department Exhibit #1, pg 287).

(5) Claimant has high blood pressure and high cholesterol, both adequately controlled with prescription medications (Department Exhibit #1, pg 275).

(6) In December, 2005 (subsequent to cardiac stenting), claimant underwent cardiac testing which revealed a normal ejection fraction (65%), with no other significant abnormalities except mild concentric left ventricular hypertrophy (Department Exhibit #1, pg 231).

(7) Claimant has a valid driver's license and is fully independent in all activities of daily living, although he reports getting easily fatigued (Department Exhibit #1, pgs 230 and 283-285).

(8) In February, 2005, claimant spent three days in the hospital secondary to a COPD exacerbation caused by an extensive tobacco abuse history.; smoking cessation was strongly recommended and as of his March 6, 2008 hearing date, claimant reported reduction to two cigarettes daily; currently no bronchodilators are being prescribed, per self report (Department Exhibit #1, pgs 219 and 220).

(9) Claimant has not been hospitalized for any additional COPD exacerbations or cardiac intervention since 2005 (Department Exhibit #1, pg 313).

(10) Claimant has been diagnosed with low back pain secondary to osteoarthritis; he uses Vicodin ES as needed for pain management (Department Exhibit #1, pg 206).

(11) Xanax has been prescribed for stress relief associated with claimant's health history (Department Exhibit #1, pg 202).

(12) Claimant is a non-insulin dependent diabetic, adequately controlled as long as medication (Glucophage) compliance is maintained (Department Exhibit #1, pgs 315 and 379).

(13) Claimant's September 4, 2007 health update verifies clear lungs, normal blood pressure and well-controlled blood sugar levels (Department Exhibit #1, pg 379).

(14) Claimant reported his low back pain at 4 on a 1 to 10 scale (Department Exhibit #1, pg 379)(See also Finding of Fact #10 above).

(15) An April 3, 2008 psychological evaluation indicates claimant was recently diagnosed with Bipolar Disorder; Cymbalta was added to his psychotropic medication schedule at that time (New Medical Evidence, pg 3).

(16) Claimant achieved a Verbal IQ score of 76, a Performance IQ score of 81 and a Full Scale IQ score of 76, placing him in the borderline range of intellectual functioning (New Medical Evidence, pg 4).

(17) Perceptual organization, spacial perception and formal reasoning were claimant's strengths, falling within the average range (New Medical Evidence, pg 4).

(18) Claimant was diagnosed with a Mood Disorder secondary to his medical history; past polysubstance dependence was deemed in remission, per claimant's self report (Department Exhibit #1, pg 5).

(19) Claimant is not engaged in any mental health treatment or counseling and no psychiatric hospitalizations are evidenced by his records (Department Exhibit #1, pg 385).

(20) A Medical Examination Report (DHS-49) from claimant's treating physician dated September 18, 2007 is consistent with light exertional level capability; claimant's condition was noted as stable (Department Exhibit #1, pg 370).

(21) When the department proposed MA case closure at review in October, 2007, claimant filed a hearing request dated October 5, 2007; consequently, the closure was deleted pending issuance of this Hearing Decision.

(22) At the hearing on March 6, 2008, claimant endorsed back pain, shortness of breath, sleeplessness, depression and ongoing fatigue, and argued these combined conditions require his disability status to continue.

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.

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). Claimant is not disqualified from receiving continued disability benefits at this step because he has not been gainfully employed since 2002 (See Finding of Fact #1 above).

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). These listed impairments contained over 100 medical conditions which are automatically deemed to qualify an individual for a disability due to their severity. However, claimant's impairments, standing alone or combined, fail to rise to listing status; consequently, this analysis 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).

In this case, this Administrative Law Judge finds improvement has definitely been shown. Claimant's high blood pressure, high cholesterol and non-insulin diabetes all are noted to be well controlled as long as medication compliance is maintained. Claimant's cardiac tests after stenting reveal a normal ejection fraction and he has not had any hospitalizations for COPD or cardiac intervention since 2005. Additionally, claimant's osteoarthritis appears responsive to pain management with Vicodin ES (See Finding of Fact #14 above). Likewise, claimant is not involved in any mental health treatment or counseling and no severe mental/emotional/cognitive impairments are evidenced by the medical records submitted to date.

Furthermore, it must be noted the law does not require an individual to be completely symptom free before finding a lack of disability can be rendered. In fact, if an individual's symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled is considered.

This Administrative Law Judge finds claimant's medical improvement is related to claimant's 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.

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, ruling any ambiguities in claimant's favor, this Administrative

Law Judge finds severity is met because the *de minimus* standard must be used, per Higgs v Bowen, 880 F2d 860,862(6th Cir, 1988).

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. In this case, this Administrative Law Judge finds, from the medical/psychological evidence of record, that claimant may not be capable of returning to the medium/heavy exertional job duties involved in his past construction, janitorial or fast food jobs because they may exacerbate his osteoarthritis or COPD symptoms. As such, this analysis must continue

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, claimant is a younger individual with a high school education and an unskilled work history. Therefore, this Administrative Law Judge finds claimant retains the residual functional capacity to perform unskilled, light work, defined as follows:

Unskilled work. Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength.... 20 CFR 416.968(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

This finding is consistent with the evidence presented, and also, with claimant's treating physician's opinion (See Finding of Fact #20 above). As such, the department's proposed MA case closure at mandatory review was correct and it must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly proposed to close claimant's MA case at mandatory review in October, 2007.

Accordingly, the department's action is AFFIRMED.

/s/ _____
Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: _____

Date Mailed: _____

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.

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cc:

