

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████,

Claimant

Reg. No.: 2008-29514

Issue No.: 2009; 4031

Case No.: ██████████

Load No.: ██████████

Hearing Date:

March 4, 2009

Wayne County DHS

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 March 4, 2009. The claimant appeared and testified. Following the hearing, the record was kept open for the 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 Medical Assistance (MA-P) and State Disability Assistance (SDA) programs?

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 MA-P and SDA benefits based upon a December 29, 2003 application.
- 2) On July 28, 2008, the department notified claimant that it intended to terminate his ongoing MA-P benefits effective August 9, 2008, because claimant had been denied social security benefits by the Social Security Administration.
- 3) On August 9, 2008, claimant's MA-P case was terminated.
- 4) On August 13, 2008, the department notified claimant that his SDA benefits would terminate on August 26, 2008 based upon the belief that claimant no longer met the requisite disability criteria.
- 5) On August 22, 2008, claimant filed a hearing request to protest the closure of his MA-P case and proposed closure of his SDA case.
- 6) Thereafter, the department deleted its proposed closure of claimant's SDA case pending the outcome of the instant hearing.
- 7) At the hearing, claimant reported that his condition had deteriorated and that he intended to immediately reapply for disability benefits with the Social Security Administration.
- 8) Claimant, age [REDACTED], has a high school education.
- 9) Claimant last worked in [REDACTED] as a photographer. Claimant has also performed relevant work as an artist, art sales person, and performed picture framing duties.
- 10) Claimant currently suffers from polycythemia vera, fibromyalgia, bilateral carpal tunnel syndrome, hypertension, exogenous obesity, post-traumatic osteoarthritis of the left ankle and osteoarthritis of the bilateral knee joints with functional

limitations, migraine headaches, obstructive sleep apnea, hyperlipidemia, chronic obstructive pulmonary disease, chronic venous ulceration of the left lower extremity, and depression.

- 11) Claimant is moderately to markedly limited in his ability to walk, stand, lift, and engage in fine manipulation.
- 12) Claimant's limitations have lasted 12 months or more.
- 13) When comparing current medical documentation with documentation from the most recent disability approval, it is found that medical improvement of claimant's conditions has not occurred as there has been no decrease in the severity of claimant's impairments as shown by changes in symptoms, signs, and/or laboratory findings.

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).

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

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 MA at this stage 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, the 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 MA-P in 2004. On [REDACTED], claimant treating neurologist opined that claimant was limited to occasionally lifting up to 6-10 lbs as well as limited to standing 1 hour, walking 1 hour, and sitting 1 hour in an 8 hour workday. The physician indicated that claimant was incapable of operating foot or leg control on a repetitive basis and incapable of pushing/pulling or fine manipulation. He had also noted that claimant had problems with comprehension. More recently, on [REDACTED], the same treating neurologist opined that claimant was limited to occasionally lifting less than 10 lbs as well as limited to standing and walking less than 2 hours in an 8 hour workday and sitting less than 6 hours in an 8 hour workday. The neurologist found claimant to be incapable of repetitive activities with the upper and lower extremities. EMG testing performed on [REDACTED] of the upper extremities documented bilateral carpal tunnel syndrome as well as left ulnar neuropathy at the elbow. EMG testing on [REDACTED], documented right tarsal tunnel syndrome. A consulting internist exam performed for the department on [REDACTED] noted functional orthopedic limitations with regard to claimant's left ankle joint and knee joints. Claimant has had ongoing problems with venous ulceration of his left lower extremities. He was hospitalized on [REDACTED] as a result of lower extremity edema and ulceration. After

Careful review of past medical documentation with current medical documentation, the undersigned finds that there has been no documented medical improvement in claimant's condition.

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, the undersigned 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, the undersigned 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 MA must continue.

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 SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM Item 261. Inasmuch as claimant continues to be found "disabled" for purposes of MA, he must also be found "disabled" for purposes of SDA benefits.

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 Medical Assistance and State Disability Assistance programs.

Accordingly, the department's determination in this matter is hereby REVERSED. Assuming that claimant is otherwise eligible for program benefits, the department is ordered to

maintain and/or reinstate claimant's eligibility for MA and SDA benefits. The department shall review claimant's ongoing eligibility for program benefits in May 2010.

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

Date Signed: 07/30/09

Date Mailed: 07/30/09

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 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.

LSS/dj

cc:

