

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER:



Reg No. 200911649
Issue No. 2009/4031
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: April 30, 2009
Ionia County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held April 30, 2009.

ISSUE

Whether the department has established claimant is no longer disabled for Medical Assistance (MA) and State Disability Assistance (SDA).

FINDINGS OF FACT

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

1. During December 2008, claimant was a recipient of MA and SDA. His assistance was due for review.
2. November 14, 2008, the Medical Review Team (MRT) denied claimant's MA and SDA medical review. Department Exhibit A.
3. December 15, 2008, the department sent claimant written notice that his assistance would terminate.
4. December 22 2008, the department received claimant's timely request for hearing.

5. February 10, 2009, the State Hearing Review Team (SHRT) denied claimant's medical review. Department Exhibit B.
6. April 30, 2009, the telephone hearing was held. Prior to the close of the record, claimant submitted additional medical evidence. Claimant waived the right to a timely hearing decision. July 31, 2009, after review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, 4-31-09.
7. Claimant asserts disability based on ulcer on foot, amputation of left large toe, neuropathy in feet, and depression..
8. Claimant testified at hearing. Claimant is 42 years old, 5'11" tall, and weighs 301 pounds. Claimant completed high school and is able to read, write, and perform basic math. Claimant has a driver's license and is able to drive. Claimant cares for his needs at home.
9. Claimant's past relevant employment is in construction as a roofer and doing factory work.
10. At last positive decision in October 2008, claimant had diabetes mellitus, peripheral neuropathy, Plantar declination, contracted Achilles tendon, and chronic non healing ulceration of the foot. He had previous amputation of great toe. Claimant was non weightbearing on that foot and continued to have treatment. Department Exhibit A, pgs 82-98. In March 2008, claimant's physician indicated that altered gait secondary to amputation of his toe, diabetic retinopathy, general weakness, and polyneuropathy. Department Exhibit A, pgs 26-27.
11. At review, claimant underwent an independent physical examination. The narrative report indicates in pertinent part: Visual acuity right eye is 20/50, left eye also 20/50 without corrective lenses. There is no clubbing, cyanosis, or edema. The foraminal, popliteal, dorsalspedis, posterior tibial pulses are absent bilaterally. Hair growth is absent on lower extremities. Feet are warm with diminished color. There are no foraminal bruits. Capillary refill is two seconds. There is loss of first digit to the left foot. Patient can pick up a coin, button clothing, and open a door. Patient had mild difficulty getting on and off exam table, was unable to heel and toe walk or hop, and had moderate difficulty squatting and tandem walking due to neuropathy. Range of motion is full in all joints tested with the exception of reduced dorsiflexion by 10 degrees and reduced Plantar flexion also buy 10 degrees in the ankles bilaterally. There is sensory loss to light touch in the mid calf. There is absent proprioception. There is bilateral pallor in both feet.

Romberg testing is negative. Claimant walks with a wide based gait without use of assistive device. Doctor opines that claimant's diabetes is under relatively poor control. He has had chronic neuropathy and recurrent ulcerations although none were present today. He has findings of microvascular disease but no history of claudication. He had findings of restrictive lung disease due to his body habitus. He does benefit from the use of a crutch and walking boot to walk distances over 50 yards. Department Exhibit A, pgs 5-8.

12. When comparing the objective medical evidence at review with the objective medical evidence provided at last positive decision, it appears that some medical improvement of claimant's physical condition has occurred. At last positive decision, claimant had a non healing ulcer in his foot due to diabetes mellitus. He had a previous amputation of the great toe. He suffered polyneuropathy and unstable balance due to this condition. At review, claimant continued to suffering frequent ulcers in his foot but did not have any at the current time. Claimant still required a boot and a crutch to walk more than 50 yards. He continued to suffer from neuropathy, loss of sensation, and unstable gait due to the neuropathy.
13. Claimant's medical improvement is insignificant as relates to his ability to do work.
14. Claimant is disabled.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 do 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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

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).

Medical improvement. Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued 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 your impairment(s).... 20 CFR 416.994(b)(1)(i).

Medical improvement not related to ability to do work. Medical improvement is not related to your ability to work if there has been a decrease in the severity of the impairment(s) as defined in paragraph (b)(1)(i) of this section, present at the time of the most

recent favorable medical decision, but no increase in your functional capacity to do basic work activities as defined in paragraph (b)(1)(iv) of this section. If there has been any medical improvement in your impairment(s), but it is not related to your ability to do work and none of the exceptions applies, your benefits will be continued.... 20 CFR 416.994(b)(1)(ii).

Medical improvement that is related to ability to do work. Medical improvement is related to your ability to work if there has been a decrease in the severity, as defined in paragraph (b)(1)(i) of this section, of the impairment(s) present at the time of the most recent favorable medical decision **and** an increase in your functional capacity to do basic work activities as discussed in paragraph (b)(1)(iv) of this section. A determination that medical improvement related to your ability to do work has occurred does not, necessarily, mean that your disability will be found to have ended unless it is also shown that you are currently able to engage in substantial gainful activity as discussed in paragraph (b)(1)(v) of this section.... 20 CFR 416.994(b)(1)(iii).

Functional capacity to do basic work activities. Under the law, disability is defined, in part, as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment(s).... 20 CFR 416.994(b)(1)(iv).

...Point of comparison. For purposes of determining whether medical improvement has occurred, we will compare the current medical severity of that impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled to the medical severity of that impairment(s) at that time.... 20 CFR 416.994(b)(1)(vii).

...If medical improvement has occurred, we will compare your current functional capacity to do basic work activities (i.e., your residual functional capacity) based on the previously existing impairments with your prior residual functional capacity in order to determine whether the medical improvement is

related to your ability to do work. The most recent favorable medical decision is the latest decision involving a consideration of the medical evidence and the issue of whether you were disabled or continued to be disabled which became final. 20 CFR 416.994(b) (1)(vi).

...Medical improvement. Medical improvement is any decrease in the medical severity of impairment(s) present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled and is determined by a comparison of prior and current medical evidence which must show that there have been changes (improvement) in the symptoms, signs or laboratory findings associated with that impairment(s). 20 CFR 416.994(b)(2)(i).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2001 PA 82. The Family Independence Agency (FIA or agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Agency policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (a) Recipient of Supplemental Security Income, Social Security or Medical Assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be

90 days. Substance abuse alone is not defined as a basis for eligibility.

- (c) A resident of an adult foster care facility, a home for the aged, a county infirmary, or a substance abuse treatment center.
 - (d) A person receiving 30-day post-residential substance abuse treatment.
 - (e) A person diagnosed as having Acquired Immunodeficiency syndrome (AIDs).
 - (f) A person receiving special education services through the local intermediate school district.
 - (g) A caretaker of a disabled person as defined in subdivision (a), (b), (e), or (f) above.
- (2) Applicants for and recipients of the State Disability Assistance program shall be considered needy if they:
- (a) Meet the same asset test as is applied to applicants for the Family Independence Program.
 - (b) Have a monthly budgetable income that is less than the payment standard.
- (3) Except for a person described in subsection (1)(c) or (d), a person is not disabled for purposes of this section if his or her drug addiction or alcoholism is a contributing factor material to the determination of disability. 'Material to the determination of disability' means that, if the person stopped using drugs or alcohol, his or her remaining physical or mental limitations would not be disabling. If his or her remaining physical or mental limitations would be disabling, then the drug addiction or alcoholism is not material to the determination of disability and the person may receive State Disability Assistance. Such a person must

actively participate in a substance abuse treatment program, and the assistance must be paid to a third party or through vendor payments. For purposes of this section, substance abuse treatment includes receipt of inpatient or outpatient services or participation in Alcoholics Anonymous or a similar program. 1995 PA 156, Sec. 605.

- (4) A refugee or asylee who loses his or her eligibility for the federal Supplemental Security Income program by virtue of exceeding the maximum time limit for eligibility as delineated in Section 402 of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 U.S.C. 1612, and who otherwise meets the eligibility criteria under this section shall be eligible to receive benefits under the State Disability Assistance program.

At Step 1, claimant 's impairments do not meet or equal any Social Security Listing. Finding of Fact 10-14.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has significantly medically improved at medical review. At last positive decision, claimant had a non healing foot ulcer and was unable to weight bear on that foot. He had polyneuropathy in the lower extremities and unstable gait. At medical review, claimant currently had no non healing foot ulcer but continued to be plagued with periodic foot non healing ulcers. He required a boot and a crutch to walk more than 50 feet. He had unstable gait due to polyneuropathy. Finding of Fact 10-14.

At Step 3, claimant's medical improvement is not related to his ability to perform the work. Claimant does not appear to have any significant medical improvement of his foot ulcers and ability to ambulate. Finding of Fact 10-14.

At Step 4, see discussion at Step 3 above.

At Step 5, claimant appears to have severe impairments. Claimant continues to have ulcers in his feet. He has amputation of the left great toe and he has neuropathy in the lower extremities. His gait is unstable and he requires a boot and crutch to ambulate more than 50 feet. See discussion at Step 2 and 3 above. Finding of Fact 10-14.

At Step 6, claimant's past relevant employment has been in construction as a roofer and doing factory work. The record appears to establish that claimant is incapable of performing the tasks required by these jobs. See discussion at Steps 2 and 3 above. Finding of Fact 9-14.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 7, the objective medical evidence of record is not sufficient to establish that claimant has significant medical improvement that would enable him to work. See discussion at Step 2 above. Finding of Fact 10-14.

After careful examination of the record and for reasons discussed above, the Administrative Law Judge decides that the department has not established claimant has medically improved since his last positive decision. Accordingly,

claimant continues to meet the disability requirement for MA based on disability and the disability requirement for SDA.

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 claimant has medically improved for purposes of Medical Assistance and State Disability Assistance.

Accordingly, the department's action is, hereby, REVERSED. The department is to initiate a determination of claimant's financial eligibility for Medical Assistance and State Disability Assistance in compliance with department policy and this Decision and Order. Medical review is set for January 2012.

/s/

Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 29, 2010

Date Mailed: November 30, 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.

JAB/ db

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