

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: 2009-12350
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 5, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 May 5, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly propose to cancel claimant's Medical Assistance (MA-P) and State Disability Assistance (SDA) benefits based upon its determination that claimant had medical improvement?

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 was a Medical Assistance and State Disability Assistance benefit recipient.

(2) Claimant's Medical Assistance and State Disability Assistance benefits case was scheduled for a medical review September 2007.

(3) On December 18, 2008, the Medical Review Team denied claimant's continued application stating that claimant had medical improvement.

(4) On December 23, 2008, the department caseworker sent claimant notice that his Medical Assistance and State Disability Assistance benefits would be cancelled effective January 1, 2009 based upon medical improvement.

(5) On December 30, 2008, claimant filed a request for a hearing to contest the department's negative action.

(6) On February 12, 2009, the State Hearing Review Team again denied claimant's application stating that claimant has had medical improvement per 20 CFR 416.994 and is capable of performing other work in the form of light work per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a), pursuant to Medical-Vocational Rule 202.13.

(7) Claimant is a 53-year-old man whose birth date is [REDACTED]. Claimant is 5' 6" tall and weighs 147 pounds. Claimant recently lost 30 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(8) Claimant last worked September 11, 2006 as a security guard. Claimant has also worked odds and ends jobs and worked as a truck driver for 12 years.

(9) Claimant alleges as disabling impairments: coronary artery disease, stent in the chest, a bad heart and fainting spells.

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).

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 person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

Claimant's complaints and allegations concerning impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

Claimant's complaints and allegations concerning impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who has the physical and mental capacity to engage in work activities on a regular and continuing basis.

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 the instant case, claimant is not working and has not worked since September 2006.

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). In the instant case, this Administrative Law Judge finds that claimant's impairments do not meet or equal the severity of an impairment listed in Appendix 1.

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, the objective medical evidence in the record indicates that as of [REDACTED], claimant's examination areas were normal except that he had heart failure and the clinical impression was that he was deteriorating and he can occasionally lift less than 10 pounds. He can never use his upper extremities for reaching and pushing/pulling and he can operate foot and leg controls with both feet and legs. Claimant has some memory problems. (Pages 11-12)

Another examination report which is not signed or dated indicates that claimant's condition is deteriorating and that he can frequently lift less than 10 pounds, occasionally lift 10 pounds and never lift 20 pounds or more. He can stand or walk less than two hours in an eight hour day and he can use his upper extremities for simple grasping, reaching and fine manipulating but not pushing/pulling and he can operate foot and leg controls and has some problems with his memory. (Pages 13-14)

On a [REDACTED] Medical Needs form it indicates that claimant had GERD, hypertension, dysfunction and coronary artery disease and that he does have a medical need for assistance with any of his personal care activities which include meal preparation, shopping, laundry and housework. (Page 15) Another examination report in the file indicates that as of [REDACTED]

██████████, that claimant's examination areas were he was normal were the general, respiratory, abdominal, neurological and mental and that he had a 65% ejection fraction. (Page 16) A second Medical Needs form in the file indicates that claimant has congestive heart failure, GERD and hypertension.

A stress echocardiography report at page 19 which indicates that stress test was positive for angina but negative for diagnostic EKG changes and wall motion abnormality at high workload. He had excellent exercise tolerance. A medical source statement of ability to do work-related activities indicates that lifting and carrying would be affected by his impairment occasionally and that he can lift less than 10 pounds and that he can stand at least two hours in an eight hour workday and his sitting is not affected by his impairment and pushing/pulling affects the impairment. The medical/clinic findings were that claimant has congestive heart failure, coronary artery disease with a low ejection fraction and global hypokinesis and was being evaluated for a pacemaker placement at ██████████. Claimant can never climb stairs. He can occasionally balance. He can never kneel, crouch or crawl and he is limited in reaching in all directions and handling gross manipulations but he can finger and feel. He had an unlimited ability to speak, hear and see. (Pages 20-22) Reports in the file indicate that claimant has severe two-vessel coronary artery disease including two lesions in the dominant right coronary artery and has stenosis in the third obtuse marginal branch of the circumflex artery. Successful PTCA/stent deployment for treatment of the RCA lesions and PTCA alone for the OM3 lesion. There was a normal left ventricular function with a small area of hypokinesis in the inferior wall. There was normal hemodynamics. (Page 47) In the worker observations and comments it is indicated difficulty was or has been observed for any of the following: breathing, memory, signs

of fatigue, understanding and walking and the worker indicates the claimant appears to be in continued need of assistance on [REDACTED]. (Page 4)

In the instant case, the department has not established that there has been medical improvement as shown by a decrease in medical severity.

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 none of the exceptions in this item apply in this 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 the second group of exceptions to medical improvement also does not apply.

Claimant's impairments and limitations have a major effect upon claimant's ability to perform basic work activities. Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a) because of the nature of the limitations. The total impact caused by the combination of medical problems suffered by the claimant must be considered. The combination of claimant's impairments result in a severe impairment which limits claimant's ability to work. 20 CFR 404.1529.

This Administrative Law Judge does take into account claimant's complaints of pain in that the diagnoses do support the claims. Subjective complaints of pain where there are objectively established medical conditions that can reasonably be expected to produce the pain must be taken into account in determining a claimant's limitations. *Duncan v Secretary of HHS*, 801 F2d 847, 853 (CA6, 1986); 20 CFR 404.1529, 416.929.

This Administrative Law Judge finds that claimant's impairments render claimant unable to do even sedentary work. Claimant is therefore disabled for the purposes of the programs. 20 CFR 404, Subpart P, Appendix 2, Rule 201.00(h).

This Administrative Law Judge finds that the department has not established by the necessary, competent, material and substantial evidence on the record that claimant does have medical improvement. There is nothing in the State Hearing Review Team decision or in the Medical Review Team decision which indicates why the Medical Review Team and the State

Hearing Review Team feels that claimant's medical condition has improved. Therefore, the department's decision must be reversed.

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 by the necessary, competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was no longer eligible for Medical Assistance and State Disability Assistance benefits based upon medical improvement. There is no statement of why the State Hearing Review Team or the Medical Review Team determined that claimant has medical improvement in this case.

Accordingly, the department's decision is REVERSED. The department is ORDERED to reinstate claimant's Medical Assistance and State Disability Assistance benefits, and if claimant is otherwise eligible, to leave open claimant's ongoing Medical Assistance and State Disability Assistance cases.

The department is ORDERED to perform a medical review of claimant's medical condition in June 2010. At that time, the department shall assist claimant in gathering a full physical assessment as well as a cardiology assessment of claimant's ongoing medical condition.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 29, 2009

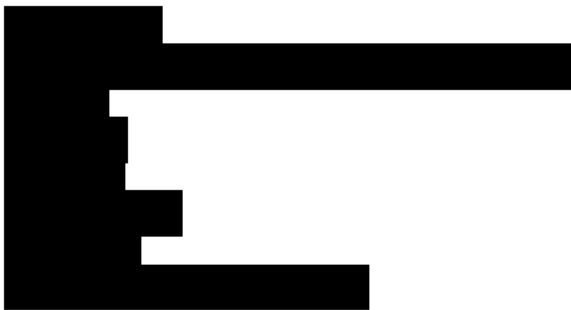
Date Mailed: July 1, 2009

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.

LYL/vmc

cc:

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