

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: 2009-1382

Issue No: 4031

Case No:

Load No:

Hearing Date:

March 3, 2009

Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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, an in-person hearing was held on Tuesday, March 3, 2009. The claimant personally appeared and testified with his mother, [REDACTED] friend, [REDACTED], and attorney, [REDACTED]
[REDACTED]

ISSUE

Did the department properly determine that the claimant has not established continued eligibility for disability under 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) On February 28, 2008, the claimant applied for SDA.
- (2) On March 14, 2008, the Medical Review Team (MRT) approved the claimant for SDA from February 2008 to June 2008 with a medical review required in June 2008.
- (3) On September 16, 2008, the MRT denied the claimant's June 2008 medical review for continued SDA stating that the claimant's physical or mental impairment does not prevent employment for 90 days or more.
- (4) On September 23, 2008, the department caseworker sent the claimant a notice that his application was denied.
- (5) On September 26, 2008, the department received a hearing request from the claimant, contesting the department's negative action.
- (6) On October 17, 2008, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of SDA eligibility for the claimant. The SHRT report reads in part:

The claimant is 48 years old and alleges continued disability due to back and neck problems. The claimant has a 12th grade education and a history of unskilled work.

The claimant had a cervical discectomy and fusion in [REDACTED] [REDACTED]. He continues to report pain and he had decreased range of motion and tenderness. However, there was no evidence of significant neurological abnormalities.

The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform simple, unskilled, light work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile (younger individual, 12th grade education, and history of unskilled work), SDA is denied using Vocational Rule 202.20 as a guide because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

(7) During the hearing on March 3, 2009, the claimant requested permission to submit additional medical information that needed to be reviewed by SHRT. Additional medical information was received from the local office on March 28, 2009 and forwarded to SHRT for review on June 9, 2009.

(7) On June 18, 2009, the SHRT considered the newly submitted objective medical evidence in making its determination of SDA. The SHRT report reads in part:

The claimant is 46 years old with 12 years of education and an unskilled work history. He is alleging disability due to back and neck problems. The claimant did not meet applicable Social Security Listing 1.01. The claimant is capable of other work that is sedentary, light, and unskilled, per Vocational Rule 202.20 and 201.27.

The additional information received does not significantly affect the residual functional capacity to perform at least unskilled, light/sedentary work.

(8) The claimant is a 49 year-old man whose date of birth is [REDACTED]. The claimant is 5' 6" tall and weighs 140 pounds. The claimant has a high school diploma. The claimant testified that he can read and write, but cannot do basic math. The claimant was last employed as a laborer at the heavy level in February 2008. The claimant has also been employed as a roofer and RV mechanic at the heavy level.

(9) The claimant's alleged impairments are arthritis in his back, headaches, degenerative disc disease, and chronic pain.

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 department's Program Eligibility Manual provides the following policy statements and instructions for caseworkers regarding the SDA program.

DISABILITY – SDA

DEPARTMENT POLICY

SDA

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older.

Note: There is no disability requirement for AMP. PEM 261, p. 1.

DISABILITY

A person is disabled for SDA purposes if he:

- receives other specified disability-related benefits or services, or
- resides in a qualified Special Living Arrangement facility, or
- is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. PEM, Item 261, p. 1.

Other Benefits or Services

Persons receiving one of the following benefits or services meet the SDA disability criteria:

- Retirement, Survivors and Disability Insurance (RSI), due to disability or blindness.

- . Supplemental Security Income (SSI), due to disability or blindness.
- . Medicaid (including spend-down) as blind or disabled if the disability/blindness is based on:
 - .. a DE/MRT/SRT determination, or
 - .. a hearing decision, or
 - .. having SSI based on blindness or disability recently terminated (within the past 12 months) for financial reasons.

Medicaid received by former SSI recipients based on policies in PEM 150 under "**SSI TERMINATIONS,**" **INCLUDING "MA While Appealing Disability Termination,"** does not qualify a person as disabled for SDA. Such persons must be certified as disabled or meet one of the other SDA qualifying criteria. See "**Medical Certification of Disability**" below.

- . Michigan Rehabilitation Services (MRS). A person is receiving services if he has been determined eligible for MRS and has an active MRS case. Do not refer or advise applicants to apply for MRS for the purpose of qualifying for SDA.
- . Special education services from the local intermediate school district. To qualify, the person may be:
 - .. attending school under a special education plan approved by the local Individual Educational Planning Committee (IEPC); **or**
 - .. not attending under an IEPC approved plan but has been certified as a special education student **and** is attending a school program leading to a high school diploma or its equivalent, **and** is under age 26. The program does not have to be designated as "special education" as long as the person has been certified as a special education student. Eligibility on this basis continues until the person completes the high school program or reaches age 26, whichever is earlier.
- . Refugee or asylee who lost eligibility for Social Security Income (SSI) due to exceeding the maximum time limit PEM, Item 261, pp. 1-2.

In general, claimant has the responsibility to prove that he/she is disabled.

Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

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, the claimant is not substantially gainfully employed and has not worked since February 2008. Therefore, the claimant is not disqualified from receiving disability at Step 1.

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 this case, the claimant's impairments or combination of impairments do not meet or equal the severity of an impairment listed in Appendix 1. Therefore, the claimant is disqualified from receiving disability at Step 2.

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 claimant has had medical improvement resulting in a decrease in medical severity. On [REDACTED], the claimant was admitted to [REDACTED] as the result of a fall that a resulting MRI of the cervical spine showed cervical cord contusion with cord edema. The claimant subsequently underwent an anterior discectomy followed by a cervical fusion, which considerably improved his symptoms. (Department Exhibit 6-7) The claimant underwent a subsequent x-ray on [REDACTED] that showed bone graft stabilizing plate and

screws at C4-C5. No post-surgical abnormality was radiographically apparent. (Department Exhibit 5) The claimant's treating neurosurgeon stated that he would be disabled until approximately May 15, 2008. (Department Exhibits 4 and 44)

On [REDACTED], the claimant received an MRI of the lumbar and cervical spine at [REDACTED]. The radiologist's impression of the claimant's lumbar spine MRI was degenerative grade 1 spondylolisthesis at the L5-S1 level with bilateral neural foraminal narrowing more so on the right than the left. There was no nerve root compression seen. Other degenerative changes as noted, but without evidence of severe spinal stenosis or nerve root compression. The radiologist's impression of the claimant's cervical spine MRI was status post anterior cervical discectomy and fusion at the C4-5 level with maintenance of good anatomical alignment. There was minimal myomalacia and perhaps very mild cord atrophy at the C5 level without change compared to the prior study of [REDACTED]. There were other minimal degenerative changes in the cervical spine, but without evidence of cord compression, nerve root compression, or interval change compared to the prior cervical spine MRI from [REDACTED]. (Department Exhibits F, G, H, and I)

On [REDACTED], the claimant was given an electro physiological/neuro physiological test as the result of radiculopathy/plexopathy/neuropathy/nerve entrapment. The radiologist's impression was a mild degree of polyneuropathy of the axonal type in the lower extremities and upper extremities. Furthermore, the changes were relatively more in the distal components. The claimant had bilateral lumbosacral and brachial plexopathy at a mild level. (Department Exhibit J)

On [REDACTED], the claimant's treating physician submitted a progress report on the claimant. The claimant reported that he smokes marijuana. The claimant had a normal physical examination. The claimant was well-developed and well-nourished with normal breath sounds. Cardiovascularally, the claimant was normal. (Department Exhibit D-E)

On [REDACTED], the claimant was given an independent medical examination at [REDACTED]. The independent medical consultant's clinical assessment was that the claimant had a history of significant cervical degenerative disc disease with radiculopathy. The claimant had what appeared to be a decompression laminectomy on [REDACTED]. The claimant has not had any further follow-up. The claimant had myofascial back pain with occasional right lower leg radiculopathy which had not been addressed. The claimant had poor nutrition and weight loss. The claimant had nicotine addiction and a history of alcohol abuse complicated by depression. The claimant stated that he does use marijuana. (Department Exhibit 14-16)

The claimant appeared much older than his stated age with poor hygiene. The claimant's dentition was terrible. The claimant admitted to being depressed. The claimant denied any suicidal or psychotic ideation. The claimant had a normal physical examination. The claimant has lost ten pounds since he stopped working. The claimant's neck had roughly 75% of normal range of motion. The claimant did have a positive Spurling's both on the right and the left. The claimant had paracervical tightness and discomfort. There was no thyromegaly or bruits. The claimant had diminished breath sounds, but no rales, wheezes, or rhonchi. The claimant also had some mild paralumbar tenderness. The claimant demonstrated normal range of motion of the back, shoulder, elbows, wrists, hands, hips, knees, ankles, and feet. The claimant did not have a shoulder impingement. He did have some modest decreased range of motion of the neck with

some upper extremity radiculopathy. The claimant's gait was slow, but not antalgic. (Department Exhibit 14-16)

At Step 3, the objective medical evidence on the record indicates that the claimant has had medical improvement. Therefore, the claimant is disqualified from receiving disability at Step 3.

In Step 4 of the sequential evaluation, the trier of fact must determine whether medical improvement is related to claimant's ability to do work in accordance with 20 CFR 416.994(b)(1)(i) through (b)(1)(iv). 20 CFR 416.994(b)(5)(iv). It is the finding of this Administrative Law Judge, after careful review of the record, that there has been medical improvement. (See prior analysis at Steps 1, 2, and 3.)

At Step 4, this Administrative Law Judge finds that the claimant's medical improvement is related to his ability to do work. The claimant had a fall and surgery in [REDACTED]. The claimant's condition has improved. The claimant had degenerative grade 1 spondylolisthesis, but no nerve root compression. He did have bilateral neural foraminal narrowing. There was no evidence of spinal stenosis or nerve root compression in his lumbar spine. In his cervical spine, the claimant had minimal symptoms and mild cord atrophy. There were also minimal degenerative changes in the cervical spine without evidence of cord compression, nerve root compression, or to the prior cervical spine MRI from [REDACTED]. The claimant's independent medical exam of [REDACTED] showed some limitations of the claimant's neck with radiculopathy. The claimant's gait was slow, but not antalgic. Thus, this Administrative Law Judge finds that claimant's medical improvement is related to the 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, the Administrative Law Judge finds that the claimant does have a severe impairment. The claimant had surgery in [REDACTED] of an anterior discectomy. The claimant's subsequent MRIs done in [REDACTED] showed mild to minimum symptoms of degenerative disc disease. The claimant's treating physician on [REDACTED] indicated that the claimant was well-developed and well-nourished, but had pain. Therefore, the claimant is not disqualified from receiving disability at Step 6.

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.

The claimant does have a driver's license and drives occasionally, but has no car. The claimant has a stiff neck where it is hard to turn and look. The claimant cooks once a day, but then he is painful where he has to sit. The claimant grocery shops with help with heavy stuff twice a week with no problem. The claimant cleans his own home by picking up. The claimant doesn't do any outside work. The claimant's hobby is hunting with a cross bow that is allowed because of his impairment. The claimant felt his condition has worsened in the past because he's had an increase in numbness in his hands, fingers, and right leg. The claimant stated that he did not have any mental impairment.

The claimant wakes up at 7:00 a.m. He watches TV and the news. He helps with the dishes. He goes outside. The claimant sits around the house. He goes to bed between 10:00 to 10:30 p.m.

The claimant felt he could walk a hundred yards. The longest he felt he could stand was fifteen minutes. The longest he felt he could sit was thirty to forty-five minutes. The heaviest weight the claimant felt he could carry was ten pounds. The claimant's level of pain on a scale of 1 to 10 without medication was an 8/9; that decreases to a 3/4 with medication.

The claimant stopped smoking ten years ago, where before he would smoke a pack a day. The claimant stopped drinking alcohol in 2008, where before he would drink on the weekends, 3-4 drinks after work. The claimant stopped smoking marijuana in 2008. The claimant stated that there was no work that he felt he could do.

In this case, the Administrative Law Judge finds that the claimant retains the capacity to perform at least light work. The claimant's pertinent work history was at the heavy level as a laborer, roofer, and RV mechanic. With the claimant's degenerative disc disease, he would be unable to perform the requirements of heavy work. Therefore, the claimant does not retain the capacity to perform his past relevant work and is not disqualified at Step 7. (See prior analysis in Steps 1, 2, 3, 4, and 6.)

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, the claimant retains the residual functional capacity to perform light work under Medical-Vocational Rule 202.20. (See prior analysis in Steps 1, 2, 3, 4, 6, and 7.) Therefore, the claimant is disqualified from receiving continued State Disability Assistance benefits because he does

have medical improvement. The record does not establish that the claimant is unable to work for a period exceeding 90 days and the claimant does not meet the disability criteria for continued State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established that it was acting in compliance with department policy when it denied the claimant's medical review for SDA to determine the claimant was no longer eligible for continued disability benefits. The claimant should be able to perform a wide range of light work. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is **AFFIRMED**.

/s/

Carmen G. Fahie
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 30, 2009

Date Mailed: January 4, 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.

CGF/vmc

cc:

[REDACTED]