

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: 2009-13963
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 30, 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 April 30, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly determine that claimant was no longer disabled for purposes of Medical Assistance (MA-P) 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 as material fact:

- (1) Claimant was a Medical Assistance and State Disability Assistance benefit recipient.
- (2) In October 2008, claimant's case was scheduled for medical review.

(3) On October 24, 2008, the Medical Review Team denied claimant's application stating that claimant had medical improvement.

(4) On October 28, 2008, the department caseworker sent claimant notice that his application and case would be cancelled effective October 24, 2008.

(5) On October 31, 2008, claimant filed a request for a hearing to contest the department's negative action.

(6) On March 4, 2009, the State Hearing Review Team again denied claimant's application stating that claimant had medical improvement per 20 CFR 416.994.

(7) Claimant is a 50-year-old man whose birth date is [REDACTED]. Claimant is 5' 7" tall and weighs 135 pounds. Claimant recently lost 10 to 15 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(8) Claimant last worked in the summer of 2008 in doing seasonal work sweeping paper in [REDACTED]. Claimant has also worked at [REDACTED] in concessions and as a janitor and truck driver and was in the Marine's from 1979 to 1982.

(9) Claimant receives State Disability Assistance, Food Assistance Program benefits and the Adult Medical Program.

(10) Claimant alleges as disabling impairments: HIV and depression.

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).

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.

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 he worked sweeping paper as a seasonal job in ██████████ in 2008. Claimant is not disqualified at this step.

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, claimant testified that he lives alone in a temporary shelter and is single with no children. Claimant testified that he lives off of his State Disability Assistance and he is looking for work. Claimant stated that he does have a driver’s license and he drives but he doesn’t have a vehicle and he usually takes the bus everyday to ██████████ or Michigan Rehabilitation Services. Claimant does cook every other day and cooks things like spaghetti and soul food and he does grocery shop one time per month with no help except for transportation. Claimant testified that

he does clean his home or area by doing the dishes, laundry and stated that he does run a tight ship. Claimant testified that his hobby is singing and that he has had HIV since [REDACTED] but he is allergic to his HIV medication and he has calluses on the bottom of his feet as well as arthritis and depression. Claimant testified that he does have some suicidal thoughts but not as many as he used to as his medication does help. Claimant testified that he has been depressed for approximately 9 years because he lost everything. Claimant testified that he can walk a block and a half to the bus stop in the morning and that he can stand for 10-15 minutes at a time and has no limits on his ability to sit. Claimant testified he is able to shower and dress himself, squat, bend at the waist, tie his shoes but not touch his toes and that the heaviest weight he can carry is 50-75 pounds and on a repetitive basis 25-35 pounds. Claimant is right handed and testified that he has arthritis in his hands and his hands cripple up in the cold. Claimant stated that his level of pain on a scale from 1 to 10 without medication is an 8/9 and with medication is an 8. Claimant testified that he does smoke a pack of cigarettes every two days and his doctor has told him to quit but he's not in a smoking cessation program. Claimant testified that he does smoke marijuana sometimes and that he has not been hospitalized in the last year. Claimant stated that in a typical day he gets up and dressed, looks for work, goes to [REDACTED] and gets on the computer and looks for work the whole day. Claimant testified that he can do anything and would like to do truck driving because it doesn't require him to stand. In the instant case, this Administrative Law Judge finds that claimant does not have an impairment or combination of impairments which 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, this Administrative Law Judge finds that there has been a decrease in medical severity and medical improvement. Although, there is no real medical information in the file, there is a mental residual functional capacity assessment which indicates that claimant has no evidence of limitation in any category or is not significantly limited in the remaining categories. Claimant has no difficulty in the above areas and he is normal functioning and utilizes public transportation. Claimant demonstrated good grooming, timeliness, orientation x4, despondent mood, good eye contact, and normal clean speech, intact judgment with logical and coherent thought process. His memory has shown improvement from continuing backwards from 100s by 7s. He presented for the appointment alone and prompt and appropriately groomed and dressed. Claimant was able to utilize public transportation. He is a high school graduate with average intellect and honorably discharged from the United States Marine Corp. He has an inconsistent work history due to adapting to HIV. He does have a history of major depressive disorder without psychotic features and has completed individual therapy and continues to participate in group. He was able to overcome the depression through [REDACTED] and developing healthy coping skills. Claimant does have difficulty with procrastination with some areas. (Pages

15-17) Claimant does have some difficulty spelling and he is able to function at a normal level. Claimant is not limited to normal or work activities though. (Page 18) An [REDACTED] Medical Examination Report indicates that claimant is normal in all areas. He was 5' 7" and 145 pounds and his blood pressure was 146/91. Claimant's condition was stable and he had no physical limitations and no mental limitations.

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 above areas is established.

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 none of the exceptions apply in these circumstances.

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 an increase in claimant's residual functional capacity based on the impairment that was present at the time of the most favorable medical determination. In the instant case, this Administrative Law Judge finds that claimant has established that he is always looking for work and that he can work at a job even with his impairments. Claimant testified that he can do anything and the medical reports indicate that claimant has basically normal mental and physical status reports.

Thus, this Administrative Law Judge finds that 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, claimant can probably perform medium, light or sedentary work even with his impairments.

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).

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 that claimant could probably perform janitorial tasks, work concessions, or again sweep paper in [REDACTED] even with his impairments.

Given claimant's residual functional capacity, his age, education and past work experience, this Administrative Law Judge finds that the department has established that claimant does have medical improvement.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either. However, it appears that claimant is involved with Michigan Rehabilitation Services and may receive State Disability Assistance benefits based upon his participation in that program. In addition, claimant should be able to receive the Adult

Medical Program even if he no longer qualifies to receive Medical Assistance benefits based upon medical improvement.

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 on the record that it was acting in compliance with department policy when it denied claimant's disability application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant is no longer disabled. The claimant should be able to perform a wide range of medium, light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence and claimant does not meet the disability standards for either program.

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: June 16, 2009

Date Mailed: June 16, 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.

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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:

