

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.: 2009-17505
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 15, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

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 conducted from Detroit, Michigan on June 15, 2009. The Claimant appeared and testified, along with his wife, [REDACTED]. Deetta Stephens appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of continued entitlement to Medical Assistance ("MA-P") benefits?

FINDINGS OF FACT

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

1. Claimant was determined to be disabled on 6/8/08 with a medical review scheduled for November 10, 2008. (Exhibit B, pp. 1, 2)

2. On December 18, 2008, the Medical Review Team (“MRT”) deferred the disability determination in order for the Claimant to attend an internal medicine examination. (Exhibit 1, pp. 3-4).
3. On January 14, 2009, the Claimant attended an independent internal medicine evaluation. (Exhibit 1, pp. 5-8).
4. On February 9, 2009, the Department sent the Claimant a Notice of Case Action informing the Claimant that he was found no longer disabled; therefore, his MA-P and SDA benefits would cancel effective February 21, 2009. (Exhibit 1, p. 1).
5. On February 18, 2009, the Department received the Claimant’s written request for a hearing protesting the determination that he was determined no longer disabled. (Exhibit 1, p. 2).
6. On April 22, 2009, the State Hearing Review Team (“SHRT”) determined the Claimant was no longer disabled and was capable of performing other work. (Exhibit 2).
7. Claimant’s impairments have been medically diagnosed as asthma, chronic bronchitis, CLPD, Type II diabetes and insulin dependent, triple bypass surgery, ischemic cardio myopathy, gastroesophageal reflux disease, herniated disc C4-5, and edema and neuropathy in feet and legs.
8. Claimant’s physical symptoms are shortness of breath, profuse sweating, uncontrolled blood sugar levels, neck pain (5/10), numbness and tingling in calves to ankles and feet, swelling in both legs, numbness and tingling in wrists, and difficulty writing.

9. Claimant's mental symptoms are short term memory problems, difficulty concentrating on occasion, anxiety attacks, crying spells every other day, nervousness, sleep disturbances, weight loss, fatigue and low self esteem.
10. The Claimant's impairment(s) will last or have lasted for a period of 12 months or longer.
11. At the time of hearing, the Claimant was 47 years old; right handed; 5' 10 ½" tall and weighed 271 pounds.
12. The Claimant completed school through the 11th grade and has previous work experience as a security guard, lab driver, courier service driver, [REDACTED], [REDACTED] dispatcher and working in a pizzeria doing pizza prep.
13. Claimant takes the following prescriptions:
 - Elavil – depression and neuropathy
 - Zoloft
 - Metformin – diabetes
 - Glipizide – diabetes
 - Benzepiril – hypertension
 - Lopressor – beta blocker, heart
 - Albuteral inhaler – rescue inhaler
 - Combien inhaler – 4x/day
 - Home nebulizer – 3x/day
 - Lasiks – for edema in legs and feet
 - Sembastin – cholesterol
 - Insulin 70/30 – injections 2/day
 - Ibuprofen 500 mg 2x/day for neck pain
 - Qbar – cortosteroid inhaler
14. New Medical Records were reviewed as follows, in part:

[REDACTED] Internal Medicine Exam (Exhibit 1, pp. 5-8)
DX and IMPRESSION:

 1. Morbid obesity, associate with Type II diabetes, which is uncontrolled.

2. Diabetic neuropathy because of changes in sensation, tingling and pain, in both lower limbs and absence of deep tendon reflexes which confirms that diagnoses.
3. History of essential hypertension with target organ damage and history of myocardial infarction with triple bypass.
4. Herniated disc between C4-C5 associated with pain and has had physical therapy, but still has residual pain and discomfort which has to be pursued, preferably by an orthopedic surgeon or a neuro surgeon.
5. History of bronchial asthma, which he has had for years.

██████████ Primary Care Physician Medical Exam Report (Exhibit 1, pp. 14-15)

CURRENT DX: Depression

CLINICAL IMPRESSIONS: Stable

EXAM: Cardiovascular – 2t edema B/L LE, Mental – depressed mood & affect

Physical Limitations: Lifting – less than 10 lbs. frequently

Stand/walk – 2 hrs in 8 hour day

Sitting – 6 hours in 8 hour day

██████████ Physiatrist IME (Exhibit 1, pp. 30-33)

DXs:

1. Herniated disc cervical spine
2. Chronic low back strain
3. Carpal tunnel syndrome, both wrists
4. Probably traumatic arthritis of the right knee
5. Chronic peripheral neuropathy-possibly related to the type-II diabetes, possibly related to neck and/or back injuries.

Medical problems such as diabetes, hypertension, elevated serum cholesterol and chronic bronchial asthma were not addressed here in the Industrial Clinic. I will recommend medical evaluation in this regard. There is possibility of decreased visual acuity secondary to his diabetes. I would also recommend that an ophthalmologist evaluate him in this regard.

The patient's musculoskeletal conditions are considered permanent and complicated by diabetes. These symptoms are expected to progress with time. Basically he requires sedentary activity with a sit/stand option and requiring only minimal walking.

CONCLUSIONS OF LAW

The Medical Assistance (“MA”) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services (“DHS”), formally known as the Family Independence Agency, 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”).

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).

A. Substantial Gainful Activity.

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). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. “Substantial work activity” is work activity that involves doing significant physical or mental activities. 20 CFR 416.972(a). “Gainful work activity” is work that is usually done for pay or profit, whether or not a profit is realized. 20 CFR 416.972(b). Generally if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has the

demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she is not disabled regardless of how severe her physical and mental impairments are and regardless of her age, education and work experience. In this case, Claimant has not worked since 8/23/07, so the analysis will proceed at the second step.

B. Listed Impairment

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 following impairments were reviewed: 1.04 *Disorders of the Spine*, 20 CFR 404 § 1.04; 4.04 *Ischemic heart disease*, 20 CFR 404 § 4.04, and 9.08 *Diabetes mellitus*, 20 CFR 404 §9.08. Based on the hearing record, the undersigned finds that the Claimant's medical record will not support findings that the Claimant's physical and mental impairment are "listed impairment(s)" or equal to a listed impairment because the medical evidence reviewed does not show that the physical impairments meet the intent or severity of the listings. 20 CFR 416.920(a)(4)(iii). The analysis will continue to the next step.

C. Medical Improvement

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 undersigned finds that Claimant has exhibited no medical improvement. First, MRT granted disability related Medicaid based on a P2, or a nonexertional mental limitation. Claimant continues to exhibit depression for which he is taking medication. Claimant testified that he undergoes crying spells every other day. Yet, there was no psychiatric or psychological IME to address Claimant's improvement. The undersigned, therefore, finds that the Department has failed to meet its burden of showing that the Claimant's mental condition has medically improved.

Furthermore, Claimant's physical condition has not medically improved either. The internal medicine IME indicated that Claimant continues to suffer from diabetes which is uncontrolled. Claimant also has diabetic neuropathy and a history of myocardial infarction with triple bypass. (Exhibit 1, pp. 5-8). A [REDACTED] psychiatrist IME indicated that Claimant's musculoskeletal conditions were considered permanent and complicated by diabetes. The doctor also indicated that the symptoms were expected to progress with time. (Exhibit 1, pp. 30-33). Furthermore, Claimant suffers from a herniated disc at C4-C5. Claimant's primary care physician indicated that Claimant's medical status was "stable" which is a decrease in function from a previous IME in 2007 where Claimant was considered to be improving. (Exhibit 1, pp. 14-15 and 38-39). Since Claimant has not exhibited any medical improvement, the analysis will continue at Step 5.

D. Exceptions

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 stated exceptions apply.

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 second group of exceptions applies. Claimant was present at the hearing and testified about his medical condition. Claimant has continued to follow prescribed treatment and has been cooperative.

F. Severe Impairment

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 Claimant suffers from a host of medical conditions including, asthma, chronic bronchitis, CLPD, uncontrolled type II insulin-dependent diabetes, ischemic cardio myopathy, herniated disc at C4-C5, edema and neuropathy in feet in legs, depression, anxiety attacks and sleep disturbances. Claimant is under the care of physicians and has been placed on physical limitations. The undersigned, therefore, finds that Claimant's physical and mental impairments are sufficiently severe. The analysis will continue at the next step.

D. Currently ability to engage in substantial gainful activity

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, Claimant's primary care physician has currently placed Claimant on physical limitations of lifting less than 10 lbs. frequently, stand/walk 2 hours in an 8 hour day, and sitting six hours in an 8 hour day. Claimant testified that he has a lot of shortness of breath due to his asthma. Claimant uses a home nebulizer three times per day plus two other inhalers to manage his asthma. Despite these medications, however, Claimant testified that he still experiences shortness of breath. Claimant can only perform light household chores such as dusting and light vacuuming. Furthermore, Claimant testified that he needs to keep his legs elevated at least 4 hours per day in order to control the swelling. Claimant's legs were noticeably swollen at the hearing. Furthermore, Claimant has pain as a result of his herniated disc and numbness and tingling in his feet and legs due to diabetic neuropathy. Claimant testified that he has a hard time sleeping at night, despite taking Elavil, due to the pain in his legs and/or shortness of breath. On top of all this, Claimant is suffering from depression which results in crying spells several times per week despite Claimant taking Zoloft and Elavil.

In addition, Client is obese. As with any other medical condition, if obesity is a "severe" impairment alone or in combination with another medical determination physical or mental impairment(s), it can significantly limit an individual's physical or mental ability to do basic work activities. SSR 01-1p. For example, obesity affects the cardiovascular and respiratory systems because of the increased workload the additional body mass places on these systems. Obesity makes it harder for the chest and lungs to expand. This means that the respiratory system must work harder to provide needed oxygen. This in turn makes the heart work harder to pump blood to carry oxygen to the body. Because the body is working harder at rest, its ability to perform additional work is less than would otherwise be expected. *Id.*

Based on his physical limitations alone, Claimant would be limited to sedentary work. Claimant has prior work experience as a security guard, driving for a courier service, driving a van for wheelchair bound patients, [REDACTED], [REDACTED] dispatcher, and working in a pizza restaurant. All of these positions require more than sedentary exertion with the exception of a dispatcher which is sedentary. Taking into consideration Claimant's other limitations, however (obesity, keeping his leg elevated four hours per day, depression, crying spells, anxiety attacks and memory problems), the undersigned finds that Claimant is unable to perform even sedentary work as 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 results in a severe impairment which limits claimant's ability to work. 20 CFR 404.1529.

In this case, there is sufficient evidence to support a finding that Claimant's impairment continues to disable him under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is medically disabled for purposes of continued benefits under the Medical Assistance Program.

It is ORDERED:

1. The Department's determination is REVERSED.

2. The Department shall initiate review of the re-determination application to determine if all other non-medical criteria are met and inform the Claimant of the determination.
3. The Department shall supplement the Claimant any lost benefits he was entitled to receive if otherwise eligible and qualified in accordance with Department policy.
4. The Department shall review the Claimant's continued eligibility in June 18, 2010 in accordance with Department policy.

/s/

Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 06/25/09

Date Mailed: 06/29/09

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.

JV/dj

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