

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.: 2009-20634
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
November 4, 2009
Macomb County DHS (36)

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 hearing was held on November 4, 2009. Claimant appeared and testified.

The record was left open for submission of additional medical information. Additional medical information was received on November 10, 2009. Subsequent medical information was received on December 4, 2009, after the record extension had ended. However, this medical data was also considered in this decision per Claimant's representative's request.

ISSUE

Whether the Department of Human Services (DHS or Department) properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) and State Disability Assistance (SDA) programs?

FINDINGS OF FACT

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

1. On August 18, 2006, Claimant was approved for MA-P and SDA based upon meeting a listing 6.02 for impairment of renal function.
2. On March 4, 2009, the Medical Review Team found that Claimant no longer met a listing.
3. On March 18, 2009, Claimant submitted to the Department a request for hearing.
4. Claimant is 25 years old.
5. Claimant completed schooling up through high school and some college.
6. In the Summer of 2009, Claimant started college taking one class and is currently enrolled in one class for the fall 2009 semester.
7. Claimant has employment experience stocking supplies and sterilizing equipment in a hospital. He also worked at a machine shop, managed a restaurant and cooked.
8. Claimant's limitations have lasted for 12 months or more.
9. Claimant suffers from depression, previous renal failure, neuropathy in his right leg, and has memory problems.
10. On [REDACTED], Claimant's physician indicated the following limitations as temporary: limited to occasionally lifting up to 10 lbs, no limits on standing or sitting, no assistive devices were listed, no limitations for hands and arms for repetitive action, and limitation on use of legs and feet for operating foot/leg

controls. There were no mental limitations noted. All examined areas were listed as normal except for musculoskeletal which noted a right foot problem.

11. On [REDACTED], Claimant's physician indicated the following: his condition was stable with limitations of lifting occasionally up to 10 lbs, standing and/or walking at least 2 hours in an 8-hour day, use of foot brace for walking assistance, no limits on repetitive movements with arms and hands, limited to use of left foot and leg only for operating foot controls. Memory was the only mental limitation listed.
12. On [REDACTED], a counselor, having an M.A. and L.L.P., who had previously treated the Claimant submitted a letter indicating that Claimant's diagnosis was major depressive disorder and generalized anxiety disorder. This counselor indicated Claimant had participated in 6 sessions from [REDACTED] [REDACTED] when he stopped attending treatment. This same treating counselor indicated limitation in all but 3 of the 20 categories of the residual functional assessment. However, this counselor also indicated this was based upon a limited assessment performed [REDACTED] and reflects Claimant's ability at that time.
13. On [REDACTED], Claimant's physician indicated stable condition with limitations listed as follows: lifting frequently up to 20 lbs and occasionally up to 50 lbs or more, no limitations listed for sitting or standing, no limitations on repetitive actions with use of hands or arms, limited to use of left foot and leg only for operating foot controls. The only mental limitations listed were memory and sustained concentration.

14. On [REDACTED], a consultative internist exam found the following: no limitations on sitting and using his hands for working, found he was unable to balance himself on right foot, should avoid ladders, prolonged standing, lifting heavy weights while standing or going into unsteady areas.
15. On [REDACTED], a consultative psychological exam found the following: functioning in the solidly average range of intellectual functioning and does not present with any symptoms of significant emotional distress, depression or anxiety which would interfere with his ability to appropriately interact in a work situation. There was very mild impairment or short-term recall, but it would not likely interfere with his ability to do simple routine tasks. Claimant had a GAF of 60 and Full scale IQ of 99. Consultant found claimant was not capable of managing his own funds and his prognosis was guarded.
16. Claimant had significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.
17. On January 19, 2010, the State Hearing and Review Team (SHRT) denied Claimant for a second time after reviewing all newly submitted medical. SHRT found improvement and Claimant capable of light unskilled work.

CONCLUSIONS OF LAW

The Medical Assistance (MA-P) 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 administers the MA-P 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 order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20R 416.901). The Department, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P, also known as Medicaid, is a program designated to help public assistance claimants pay their medical expenses.

The law defines disability as the inability to do substantial gainful activity (SGA) 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).

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).

The first step to be considered is whether the claimant can perform SGA defined in 20 CFR 416.920(b). In this case, Claimant is not working. Therefore, Claimant is not disqualified at this step in the evaluation.

In the second step, the trier-of-fact must determine if the claimant’s impairment (or combination of impairments) meets or equals the severity of an impairment listed in Appendix 1

of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that Claimant's medical record does not support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR Part 404, Part A. Accordingly, the sequential evaluation process must continue.

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 any decrease in the medical severity of the 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 the impairment(s). (See §416.928.)

In this case, Claimant was most recently approved for MA-P and SDA on August 18, 2006, based upon meeting listing 6.02 for impairment of renal functioning. In this case, the Administrative Law Judge, after comparing past medical documentation with current medical documentation, finds there is medical improvement. Specifically, Claimant's medical condition in regards to his renal failure is no longer present. There is no evidence that the renal failure continues to be an issue for Claimant. In fact, the consultative exam indicates that Claimant no longer needs dialysis. Claimant informed the consultative examiner "his main problem is difficulty with memory, especially short-term memory."

Claimant also asserted disability due to depression; however, the objective medical records submitted fail to meet the level or intensity of a listing necessary to support a finding of disabled under a listing. Therefore, a determination of whether Claimant's condition has medically improved is necessary.

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 medical improvement is not related to the ability to work, step 4 evaluates whether any listed exception applies. 20 CFR 416.994(b)(5)(iv). If no exception is applicable, disability is found to continue. *Id.* If the medical improvement *is* related to an individual's ability to do work, then a determination of whether an individual's impairment(s) is severe is made. 20 CFR 416.994(b)(5)(iii), (v). If severe, an assessment of an individual's residual functional capacity to perform past work is made. 20 CFR 416.994(b)(5)(vi). If an individual can perform past relevant work, disability does not continue. *Id.* Similarly, when evidence establishes that the impairment(s) do (does) not significantly limit an individual's physical or mental abilities to do basic work activities, continuing disability will not be found. 20 CFR 416.994(b)(5)(v). Finally, if an individual is unable to perform past relevant work, vocational factors such as the individual's age, education, and past work experience are considered in determining whether, despite the limitations, an individual is able to perform other work. 20 CFR 416.994(b)(5)(vii). Disability ends if an individual is able to perform other work. *Id.*

The first group of exceptions (as mentioned above) 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) is as follows:

- (i) Substantial evidence shows that the individual is the beneficiary of advances in medial or vocational therapy or technology (related to the ability to work;
- (ii) Substantial evidence shows that the individual has undergone vocational therapy related to the ability to work;
- (iii) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques the impairment(s) is not

- as disabling as previously determined at the time of the most recent favorable decision;
- (iv) Substantial evidence demonstrates that any prior disability decision was in error.

The second group of exceptions to medical improvement found in 20 CFR 416.994(b)(4) is as follows:

- (i) A prior determination was fraudulently obtained;
- (ii) The individual failed to cooperate;
- (iii) The individual cannot be located;
- (iv) The prescribed treatment that was expected to restore the individual's ability to engage in substantial gainful activity was not followed.

If an exception from the second group listed above is applicable, a determination that the individual's disability has ended is made. 20 CFR 416.994(b)(5)(iv). The second group of exceptions to medical improvement may be considered at any point in the process. *Id.*

As previously stated, Claimant was previously found to meet Listing 6.02; however, the medical records presented established that the renal failure as a result of a drug overdose is no longer present. Thus, an increase in the residual functional capacity exists which may relate to Claimant's ability to do work. Claimant has other impairments, such as depression and neuropathy of the right foot, which are considered in combination. Claimant has a work history in multiple simple unskilled work areas. Specifically, as a cook, stocking and sterilizing hospital supplies and machine shop work. Claimant even managed a restaurant for 3 years. Claimant's physicians as well as consulting doctors provide some limitations on Claimant's ability to work. Using the most restrictive as a guide, Claimant would be limited to the following: limited to occasionally lifting 10 lbs, standing and/or walking at least 2 hours in an 8-hour work day, would need to wear a foot brace for walking assistance, limited memory and sustained concentration, unable to balance self on his right foot, should avoid ladders, prolonged standing, lifting heavy

weights while standing or going into an unsteady areas. This a compilation of the medical exam results submitted since [REDACTED]. Claimant provided psychiatric treatment records, specifically a mental residual functional capacity exam which indicated he was restricted in all but 3 of the 20 areas. It should be noted that this form was completed based upon 6 sessions that had taken place from [REDACTED]. No further treatment was provided to indicate Claimant continued with treatment elsewhere. Claimant completed a DHS 49-G on [REDACTED], indicating he was able to complete household chores such as laundry, house cleaning, dishes and vacuuming. He further indicated he read books, news, internet and magazines. Claimant indicated he spends a few hours a day watching TV. The consultative exam conducted in [REDACTED] fails to indicate restrictions. Claimant also started taking one college class a semester beginning the Summer of 2009.

Accordingly, vocational factors such as age and education are evaluated to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v).

At the time of hearing, Claimant was 25 years old and, thus, considered to be a younger individual for MA-P and SDA purposes. Claimant has a high school education with prior work experience. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from Claimant to the Department to present proof that Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the

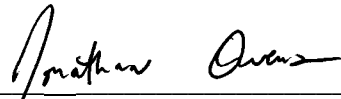
burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

In the record presented, Claimant's residual functional capacity for work activities on a regular and continuing basis does include the ability to meet at least the physical and mental demands required to perform sedentary work. After review of the entire record and using the Medical-Vocational Guidelines (20 CFR 404, Subpart P, Appendix II) as a guide, specifically Rule 201.27, it is found that Claimant is not disabled for purposes of MA-P and SDA.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is no longer considered to be medically disabled.

Accordingly, the Department's decision is hereby UPHELD.



Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 26, 2010

Date Mailed: April 26, 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.

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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.

JWO/pf

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