

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: 2009-23541

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 19, 2009

Lenawee 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, an in-person hearing was held on August 19, 2009. Claimant was represented at the hearing by [REDACTED]

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P)?

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 approved for Medical Assistance benefits by the Medical Review Team on May 13, 2008 from a March 31, 2008 application.

(2) Claimant's case for scheduled for review in March 2009.

(3) On March 30, 2009, the Medical Review Team denied claimant's continued Medical Assistance benefits stating that claimant's impairments had improved.

(4) On April 3, 2009, the department caseworker sent claimant notice that his application for continued Medical Assistance benefits was denied.

(5) On April 16, 2009, claimant filed a request for a hearing to contest the department's negative action.

(6) On June 8, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The cardiologist noted the claimant is in stable condition. The collective medical evidence shows that the claimant is capable of performing a wide range of medium/light work. 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 a wide range of medium/light work. Therefore, based on the claimant's vocational profile of a younger individual, high school graduate and a skilled work history, MA-P is denied using Vocational Rule 202.22 as a guide.

(6) The hearing was held on August 19, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was submitted and sent to the State Hearing Review Team on September 3, 2009.

(8) On September 14, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing work due to medical improvement and can perform light work per 20 CFR 416.967(b) pursuant to Medical-Vocational Rule 202.14 and

stated that this may be consistent with past relevant work. However, there is no detailed description of past work to determine this.

(9) Claimant is a 49-year-old man whose birth date is [REDACTED]. Claimant is 5' 9" tall and weighs 138 pounds. Claimant attended two years of college and studied hydraulics and welding and is able to read and write and does have basic math skills.

(10) Claimant last worked in a restaurant in [REDACTED] for four years teaching cooking. Claimant has also worked as a field service technician and running an ejection blow molding machine and doing service and setup.

(11) Claimant alleges as disabling impairments: shortness of breath, heart problems, bad circulation, cognitive deficiencies, a heart attack in [REDACTED], as well as knee and joint aches.

CONCLUSIONS OF LAW

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.

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, the claimant is not working and is not engaged in substantial gainful activity.

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).

The objective medical evidence in the record indicates that a Medical Examination Report dated [REDACTED] indicates that claimant has a diagnosis of anemia, hypertension, cardiomyopathy, cardiac arrest, cardio obstructive pulmonary disease, renal failure, and LVD. He was 69” tall and weighed 144 pounds. His blood pressure was 164/92. The clinical impression was that he was stable and that he could frequently pick up less than 10 pounds, but

could never lift 10 pounds or more. The doctor noted that claimant had cardiac arrest on [REDACTED]. He had severe cardiomyopathy documented by an ejection fraction of 20%. Although this has improved recently with aggressive medical therapy, he is required to take multiple medications several times a day. He has defibrillation which can fire anytime of the day. The doctor believed claimant to be permanently and completely disabled.

A [REDACTED] cardiology visit indicates that claimant had no chest pain, shortness of breath, palpitations, or pre-syncope/syncope. He had an echocardiogram and this showed only mild LV dysfunction with an ejection fraction of 45-50%. Generally, claimant was feeling well but recently stopped taking his medications because his prescription coverage was cut off. (p. A1) A review of claimant's symptoms indicated that claimant's pulse was 88 beats per minute and his weight was 144 pounds and he was 69" tall. His BMI was 21 and his blood pressure was 164/92. He was well developed, chronically ill-appearing, and in no acute distress. In his neck he had no palpable masses or adenopathy, no thyromegaly, JVP was normal, carotid pulses were full and equal bilaterally without bruits. His chest had normal symmetry and he had no tenderness to palpitation, normal respiratory excursion, no intercostal retraction, no use of accessory muscles, normal diaphragmatic excursion, and was clear to auscultation. In the cardiac area he had regular rhythm, S1 and S2 were normal, and no S3 or S4, apical impulse not displaced, no murmurs, no gallops, and no rubs detected. In his psychiatric capacity he had appropriate mood, memory, and judgment. In his neurological area he had no gross motor or sensory deficits. The impression was his idiopathic cardiomyopathy has improved. He was given a prescription for Norvasc, Aldactone, Carvedilol, and Lisinopril.

Claimant had a Doppler, 2D, M-Mode echocardiogram with color flow images. The observations indicated the image quality was moderate to good. The aortic root and cusps were

normal. The left atrium was normal in size. The mitral leaflets were normally mobile. The left ventricle was top limit of normal in size. There was moderate left ventricular hypertrophy. Systolic function was globally and very mildly reduced with an estimated ejection fraction of 45-50%. This was substantially improved compared to the previous study of [REDACTED]. The right-sided structures were normal. There was no evidence of intracardiac mass or pericardial effusion. The reversed E:A ratio suggested mild diastolic dysfunction. There were no significant valvular abnormalities. (p. PB1)

A Medical Examination Report dated [REDACTED] indicates that the clinical impression was that claimant was stable and that he could occasionally lift less than 10 pounds, but never lift 10 pounds or more. He did not need an assistive device for ambulation. He was able to use his upper extremities for simple grasping and fine manipulating, but not reaching or pushing/ pulling. He was not able to operate foot or leg controls with either foot or leg. (pp. 19-20)

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 claimant has had a decrease in medical severity and medical improvement.

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 this group of exceptions does not 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 these exceptions do not apply in this case.

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. This Administrative Law Judge finds that there has been an increase in claimant's residual functional capacity based upon the impairment that was present at the time of the most favorable medical determination. Claimant does have some medical improvement which is related to his ability to do work.

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, the Administrative Law Judge finds claimant does retain the residual functional capacity to perform light work.

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).

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 not perform his past work as a welder but he could probably work in a restaurant teaching cooking even with his impairments. Therefore, this Administrative Law Judge finds that claimant probably can perform some of his past work even with his impairments. There is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work which he has engaged in, in the past based upon his medical improvement.

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, given the claimant's residual functional capacity and his age, education, and past work experience, this Administrative Law Judge finds that claimant retains the capacity to perform a wide range of medium/light work and that MA-P should be denied pursuant to Medical-Vocational Rule 202.22 and 202.14.

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.

Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence as it relates to claimant's ability to perform work. Claimant testified on the record that he does have a driver's license and does drive 3-4 times per week and goes to the grocery store which is about three miles away. He does cook 3-4 times a week and cooks things like casseroles and hamburgers. Claimant does grocery shop 1-2 times per week with no help as long as he's close to home and he does clean his home by doing vacuuming, doing dirty dishes, and dusting. Claimant does mow the grass with a riding mower and he states he can walk 100-150 yards before he get short of breath. Claimant testified that he can stand for 30-45 minutes at a time and sit for an hour at a time. Claimant can shower and dress himself, bend at the waist, tie his shoes, but not touch his toes. The heaviest weight claimant can carry is a gallon of milk for short distances. Claimant is right-handed and stated that he does have poor circulation and that he has problems in the cold and he has some tingling in his hands, legs, and feet. Claimant testified that his level of pain on a scale from 1 to 10 without medication is a 4 and with medication is a 2. Claimant testified that he stopped smoking in 2008.

Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Claimant did testify that he does receive some relief from his pain medication. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from continued receipt of Medical Assistance benefits based upon the fact that claimant does have medical improvement.

The department is ORDERED to open an Adult Medical Program case on claimant's behalf, since his review application did occur during March 2009 when the Adult Medical Program was open. The department is ORDERED to determine whether or not claimant is otherwise eligible to receive the Adult Medical Program and, if claimant is otherwise eligible, to open an Adult Medical Program case for him.

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 application for continued Medical Assistance benefits and when it determined that claimant does have medical improvement for purposes of Medical Assistance benefit eligibility. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED. Because claimant's review application was in March 2009, and the Adult Medical Program was open in March 2009, the department is ORDERED to determine whether or not claimant was eligible to receive the Adult Medical Program in March 2009 and if so open an ongoing Adult Medical Program case for claimant is claimant is otherwise eligible for those benefits.

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

Date Signed: November 6, 2009

Date Mailed: November 6, 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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