

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: 2009-27643
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 9, 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 September 9, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for 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 based upon a Medical Review Team approval on March 6, 2008.
- (2) Claimant's Medical Assistance case was due for a review February 13, 2009.

(3) On April 22, 2009, the Medical Review Team denied claimant's review application stating that claimant had medical improvement.

(4) On April 28, 2009, the department caseworker sent claimant notice that his application for continued Medical Assistance and State Disability Assistance benefits was denied.

(5) On May 20, 2009, claimant filed a request for a hearing to contest the department's negative action.

(6) On July 14, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommended decision: No severe impairment was clinically documented. The medical evidence of record does not document a physical impairment that significantly limits the claimant's ability to perform basic work activities. SDA is denied per PEM 261 due to lack of severity.

(7) Claimant is a 54-year-old man whose birth date is [REDACTED]. Claimant is 6' 1" tall and weighs 160 pounds. Claimant is a high school graduate and attended one year of community college. Claimant is able to read and write and does have basic math skills.

(8) Claimant last worked approximately 12 years before the hearing at [REDACTED] as a stock person at night. Claimant has also worked inspecting auto parts and in a machine shop shipping products.

(9) Claimant alleges as disabling impairments: seizures resulting from a closed head injury as well as hearing loss in the right ear.

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.

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 working and has not worked for approximately 12 years.

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 [REDACTED] medical report states that on examination claimant was alert and cooperative. Claimant had somewhat impaired hearing. The claimant weighed 159 pounds and blood pressure was 130/80. His height was 6’ 1” tall. His vision without glasses was 20/50 on the left and 20/50 on right and 20/40 bilaterally. Clinically, the claimant was not jaundiced. The claimant’s gait was normal. The claimant was able to get on and off the examination table. The claimant could raise both arms above head level. HEENT: normocephalic. External eye movements were intact. Pupils were equal and regular, reacting to light and accommodation. Fundus was intact. ENT was benign. Neck was supple. No thyromegaly. No venous engorgement. Trachea was central. No carotid

bruit. The chest moved normally on either side. Respiratory movements were normal. The chest was clear to auscultation and percussion. No rhonchi or rales noted. In the cardiovascular area, the heart size was normal. No audible murmur. JVD was not raised. Air entry was equal. No adventitious sounds. Trachea was midline. The abdomen was soft with no masses felt. Bowel sounds were normal. No evidence of hernia. Spleen was not palpable. No ascites. In the bones and joints, straight leg raising was equal bilaterally. All peripheral pulses were equal and good bilaterally. There was no wasting of muscles. Handgrip was equal. All joint movements were normal. In the nervous system, cranial nerves II through XII were grossly intact. No gouty deformities or nodules noted. Sensory: touch, pinprick, and sensation were normal. Plantar was flexor bilaterally. Cerebellar function was normal. Motor strength was equal bilaterally. Plantar reflex was flexor. The deep tendon reflexes were 2+ in the upper and lower extremities. Heel-to-knee and finger-to-finger, finger-to-nose testing was normal. The gait was normal. No wasting of muscles. Speech and memory appeared to be normal. Orientation was normal. The claimant's general health was good. The conclusion was that this was a 54-year-old male who suffers with a past history of head injury and a history of seizures which are controlled and the claimant was on Dilantin six tablets a day and had impaired hearing in the right ear. The March 17, 2009 medical report indicates that the claimant does not have any seizures now and has not had any seizures for over two years. He takes Dilantin regularly and has not had any other prescriptions and does not have any warnings about his seizures. (pp. 7-8)

A Medical Examination Report indicates that claimant was 6' 1" tall and 162 pounds, blood pressure was 124/84 on [REDACTED]. He was normal in all areas of examination except that he had seizures. The clinical impression was that he was stable. (pp. 17-18)

In the instant case, claimant does not have an impairment or combination of impairments which meets or equals 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 the instant case, the information contained in the file is somewhat inconsistent. Medical reports in the file indicate that claimant's seizures were uncontrolled as of [REDACTED] [REDACTED] (p. 24) However, per the physical examination done [REDACTED] claimant had been seizure free for two years. He had a right ear deficit, but normal hearing in his left ear. His speech was normal. All other body system functions were normal. (pp. 7-8) This Administrative Law Judge notes that claimant was able to hear over the telephone and clearly answer all the questions. In this case, this Administrative Law Judge finds that there has been 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 none of the substantial errors have occurred.

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 the second group of exceptions does 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.

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 should be able to engage in basic work activities even with his impairments based upon the fact that he does have a basically normal physical assessment in the case.

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 work stocking at a grocery store or inspecting auto parts even with his impairments. Therefore, claimant would be able to perform his prior work even with his impairments.

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, this Administrative Law Judge finds that claimant could perform sedentary, light, and medium work even with his impairments because he does have basically normal physical and mental status examinations.

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).

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.

In the present case, the claimant has not presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although the claimant has complained of medical problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant's claim that the impairment(s) are severe enough to reach the criteria and definition of disabled. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

In the instant case, this Administrative Law Judge finds that claimant has not established that he continues to be disabled for purposes of the Medical Assistance benefits.

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.

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 by the necessary, competent, material, and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was no longer disabled for Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with his impairments. The claimant does have medical improvement based upon the objective medical information contained in the file. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: October 19, 2009

Date Mailed: October 19, 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

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