

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: 2009-30572
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 13, 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 October 13, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly propose to cancel claimant's Medical Assistance (MA-P) and State Disability Assistance (SDA) based upon its determination that claimant has medical improvement?

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) On February, 2009, claimant's case was scheduled for medical review.

(3) On June 9, 2009, the Medical Review Team denied claimant's continued eligibility for Medical Assistance and State Disability Assistance alleging that claimant had medical improvement.

(4) On June 11, 2009, the department caseworker sent claimant notice that the case was scheduled to be cancelled based upon medical improvement.

(5) On June 22, 2009, claimant filed a request for a hearing to contest the department's negative action.

(6) On August 12, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The physician stated claimant is in stable condition. (p. 80) The collective medical evidence shows that claimant is capable of performing a wide range of 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 light work. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

(7) The hearing was held on October 13, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(8) Additional medical information was submitted and sent to the State Hearing Review Team on December 8, 2009.

(9) On December 14, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: That claimant's ejection fraction was

25% in February, 2008 when he was approved for benefits. In September, 2008 his ejection fraction had improved to 50% and it was 45-50% in June, 2009. Therefore, the claimant has had significant medical improvement. However, he continues to have renal insufficiency and had a 2+ ankle edema in October, 2009. His creatinine levels do not meet the listing level of 4.0 or greater persisting for 3 months or more. His vision in his left eye did correct to within normal limits. The claimant has had medical improvement but would be limited to light work. The claimant has had significant medical improvement since his previous approval in March, 2008. 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 light work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of closely approaching advanced age of 53, 12th grade education, and unknown work history, MA-P is denied due to medical improvement and using Vocational Rule 202.13 as a guide. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would no longer preclude work activity at the above stated level for 90 days.

(10) Claimant is a 53-year-old man whose birth date is [REDACTED]. Claimant is 5' 7 1/2" tall and weighs 220 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(11) Claimant last worked in 2003 as an auto engine builder. Claimant has also worked unloading hi-los.

(12) Claimant alleges as disabling impairments: diabetes mellitus, vision problems with six surgeries on his right eye, hypertension, kidney problems, blurred vision, 30% heart function, constant headaches, shortness of breath, and loss of balance.

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).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity 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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since 2003. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that on September, 2008 the echocardiogram results were normal. (p. 14) The claimant's diabetes is not well controlled. (p. 42) Special laboratories studies show his kidneys are functioning normally. (p. 59) His

blood pressure is 140/82 with no organ damage. (pp. 44-45) His vision corrected was within the normal limits. (pp. 77-78) All other vital organs were normal. (pp. 79-80)

An echocardiogram dated February, 2008 showed an ejection fraction of 25%. The claimant's vision with correction in March, 2009 was 20/60 in the right and 20/40 in the left eye. (p. 77) The claimant was admitted in June, 2009 due to acute systolic heart failure and acute chronic renal insufficiency. His creatinine was 2.01 on admission. An echocardiogram dated June 27, 2009 showed mild enlargement of the left ventricular chamber with an estimated ejection fraction of 45-50%. In July, 2009 the claimant's creatinine was 3.1. He had trace ankle edema.

In October, 2009 the claimant's blood pressure was 149/85. He had bilateral 2+ ankle edema. He had been taken off some of his medications during his previous hospitalization and had never restarted.

In [REDACTED] transthoracic echo indicates that claimant has congestive heart failure and that he has aortic valvular sclerosis, dilated left and right atria and minimal posterior pericardial effusion. He also has a mild enlargement of the left ventricular chamber with concentric hypertrophy. Contractility at the lower limits of normal to mildly impaired. A MUGA scan of [REDACTED] indicates that claimant has upper normal left ventricular chamber size with mild generalized hypokinesis with calculated ejection fraction at 48%.

A [REDACTED] report indicates that claimant's blood pressure was 153/84, pulse was 74 per minute, weight was 228 pounds and temperature was 98.4. He had bilateral pitting edema. Claimant was to restrict his fluid intake to 40 to 50 ounces per day and also to continue with salt restriction. The impression was cardiorenal syndrome with an ejection fraction of 25%, underlying chronic kidney disease, K/DOQ stage III, EGFR 40 mL/minute, Type 1 diabetes

mellitus with retinopathy, uncontrolled hypertension due to volume excess, volume excess with pedal edema, anemia, hemoglobin at goal without erythropoietin, and renal osteodystrophy, intact PTH goal is between 30 and 70.

A [REDACTED] follow up indicates that claimant's blood pressure was 141/78, pulse was 73 per minute, weight was 209 pounds and temperature was 98.3. He had no pedal edema. Creatinine of 3.1. He was to continue his diuretics and continue his current blood pressure medicines.

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. In the instant case, it is established that the objective clinical medical evidence in the record indicates that claimant suffers a severely restricted physical or mental impairment which has lasted for the duration of at least 12 months since he was approved for Medical Assistance and State Disability Assistance benefits in 2008.

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).

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’s impairments do not 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 the instant case, this Administrative Law Judge finds that claimant has had some medical improvement because he has been compliant with his medications and that there has been a decrease in medical severity in the symptoms, signs and laboratory findings associated with claimant's impairment.

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 upon 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. This Administrative Law Judge finds that claimant has systolic heart failure

with an ejection fraction of 25% in 2008 and then in June 2009 he was admitted to the hospital with systolic heart failure with the ejection fraction of 25% again and claimant's blood pressure continues to be uncontrolled. This Administrative Law Judge finds that though claimant does have some medical improvement, the most recent medical update from [REDACTED] indicates that claimant does have anemia and that he has renal osteodystrophy with secondary hyperparathyroidism and that he does have underlying chronic kidney disease with a fluctuating GFR depending on his cardiac output and has Type 1 diabetes mellitus with retinopathy which is uncontrolled as well as coronary artery disease and congestive heart failure. This Administrative Law Judge finds that claimant has only has medical improvement because he is compliant with his medications and continues to have medical treatment. Therefore, even though this Administrative Law Judge finds that claimant does have medical improvement, this Administrative Law Judge finds there has not been an increase in claimant's residual functional capacity. This Administrative Law Judge finds that the clinical impression is that claimant's condition is stable and that he can frequently lift 10 pounds and occasionally lift 20 pounds but never 25 pounds or more. That he can stand or walk less than 2 hours in an 8 hour day and sit less than 6 hours in an 8 hour day. Claimant can use his upper extremities for simple grasping, reaching, pushing and pulling and fine manipulating and operate feet and leg controls with both feet and legs. In addition, the doctor indicated that claimant cannot meet his needs in the home and he does need assistance with housework, meal preparation and shopping.

This Administrative Law Judge finds that claimant's impairments render claimant unable to do even sedentary work. Claimant is therefore disabled for the purposes of the programs. 20 CFR 404, Subpart P, Appendix 2, Rule 201.00(h).

This Administrative Law Judge finds that claimant continues to be disabled for purposes of Medical Assistance and State Disability Assistance benefits and that the department has not established all the necessary, competent, material, and substantial evidence on the record that it was acting in compliance with department policy when it determined claimant was no longer disabled 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 claimant meets the definition of medically disabled under the Medical Assistance and State Disability Assistance programs as of the February, 2009 review date.

According, the department's decision is REVERSED. The department is ORDERED to initiate a review of the February, 2009 review application if it has not already done so to determine if all other non-medical eligibility criteria are met. The department shall inform the claimant of the determination in writing and shall pay to claimant any benefits to which he is entitled.

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

Date Signed: March 11, 2010

Date Mailed: March 12, 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.

LYL/lk

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