

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: 2009-3710
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 26, 2009
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

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 February 26, 2009.

ISSUE

Is claimant entitled to continuing MA-P and SDA eligibility at review?

FINDINGS OF FACT

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

- (1) This is a review case for MA-P and SDA. Claimant was initially approved by MRT on 6/6/07 on the basis of Listing 4.02--Congestive Heart Failure (CHF).
- (2) The DHS scheduled the current case at issue herein for review in September, 2008.
- (3) On 9/10/08, the MRT denied continuing eligibility.

- (4) On 9/16/08, the DHS issued notice.
- (5) On 10/17/08, claimant filed a hearing request. The negative action took place.
- (6) Claimant testified under oath that he has an SSI application pending with the Social Security Administration (SSA).
- (7) On 11/14/08, the State Hearings Review Team (SHRT) denied claimant.
- (8) As of the review date, claimant was a 36-year-old male standing 6' tall and weighing 185 pounds. Claimant has a high school diploma. Claimant is a licensed auto mechanic.
- (9) Claimant testified that he does not smoke.
- (10) Claimant testified that he does not have an alcohol/drug abuse problem or history.
- (11) Claimant has a driver's license and can drive a motor vehicle.
- (12) Claimant is currently working. Claimant testified that he works approximately 20 hours a week doing odd jobs. Claimant's work history is as an auto mechanic and in automobile sales.
- (13) Claimant alleges continuing disability on the basis of CHF, poly-septic kidney disease, and high blood pressure.
- (14) On 11/14/08, SHRT denied claimant continuing eligibility on the basis of Medical Vocational Grid Rules 201.29 and 202.22. SHRT indicates there is no past relevant work listed. However, Exhibit 44 completed by claimant does list his past relevant work.
- (15) Claimant read into the record at the administrative hearing, an August 26, 2008 Rx note completed by claimant's treating physician which states that claimant has chronic heart disease with an impaired heart function: "... he can work with limited ability to lift over 20 pounds; he will need frequent rest."

(16) Claimant stipulated at the administrative hearing that his poly-septic kidney disease is not disabling to the extent that it interferes with claimant's ability to engage in substantial gainful activity.

(17) An 8/15/08 DHS-49 indicates that the physician first examined claimant in 2007. Claimant's examination areas were all normal including cardiovascular with the note: "Normal in physical exam. Last cardiogram 35-40% ejection fraction." Exhibit 25. The physician also notes 4/07 ejection fraction 10%. The physician notes that claimant does not have any restrictions regarding standing, sitting, or walking. Claimant's condition is "improving." Claimant has no restrictions regarding physical limitations and can meet his needs in the home. Exhibits 25 and 26. Claimant's condition has improved. A 1/29/08 echocardiogram conclusions final radiology report indicates no evidence of significant pericardial effusion; overall LVEF is estimated at 35 to 40%. Exhibit 29.

(18) Claimant reported at the administrative hearing that he does meal preparation, does not need any assistance with bathroom and grooming needs, can do laundry, and can drive an automobile. Claimant stipulated that with training he could do a desk job with a sit/stand option.

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).

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).

Michigan administers the federal MA program. In assessing eligibility, Michigan defers to the federal guidelines.

Statutory authority for the SDA program states in part:

- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

As noted in the Findings of Fact, claimant's case is a review case. With regards to review, federal and state law is quite specific in requiring a different sort of analysis than the traditional sequential analysis. It is basically a seven-step analysis which requires a showing of improvement and that the improvement is related to an individual's ability to engage in work. If yes, then the remaining five steps are basically an application of the standard five-step sequential analysis.

These review guidelines state in part:

...the medical evidence we will need for a continuing disability review will be that required to make a current determination or decision as to whether you are still disabled, as defined under the medical improvement review standard.... 20 CFR 416.993.

...In some instances, such as when a source is known to be unable to provide certain tests or procedures or is known to be nonproductive or uncooperative, we may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that your disability has ended, we will develop a complete medical history covering at least the 12 months

preceding the date you sign a report about your continuing disability status.... 20 CFR 416.993(b).

...If you are entitled to disability benefits as a disabled person age 18 or over (adult) there are a number of factors we consider in deciding whether your disability continues. We must determine if there has been any medical improvement in your impairment(s) and, if so, whether this medical improvement is related to your ability to work. If your impairment(s) has not so medically improved, we must consider whether one or more of the exceptions to medical improvement applies. If medical improvement related to your ability to work has not occurred and no exception applies, your benefits will continue. Even where medical improvement related to your ability to work has occurred or an exception applies, in most cases, we must also show that you are currently able to engage in substantial gainful activity before we can find that you are no longer disabled. 20 CFR 416.994(b).

Medical improvement. Medical improvement is any decrease in the medical severity of your 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 your impairment(s).... 20 CFR 416.994(b)(1)(i).

Medical improvement not related to ability to do work. Medical improvement is not related to your ability to work if there has been a decrease in the severity of the impairment(s) as defined in paragraph (b)(1)(i) of this section, present at the time of the most recent favorable medical decision, but no increase in your functional capacity to do basic work activities as defined in paragraph (b)(1)(iv) of this section. If there has been any medical improvement in your impairment(s), but it is not related to your ability to do work and none of the exceptions applies, your benefits will be continued.... 20 CFR 416.994(b)(1)(ii).

Medical improvement that is related to ability to do work. Medical improvement is related to your ability to work if there has been a decrease in the severity, as defined in paragraph (b)(1)(i) of this section, of the impairment(s) present at the time of the most recent favorable medical decision **and** an increase in your functional capacity to do basic work activities as discussed in paragraph (b)(1)(iv) of this section. A determination that medical improvement related to your ability to do work has occurred does not, necessarily, mean that your disability will be found to have

ended unless it is also shown that you are currently able to engage in substantial gainful activity as discussed in paragraph (b)(1)(v) of this section.... 20 CFR 416.994(b)(1)(iii).

As noted above, the first prong requires a showing of improvement. As noted, claimant was approved by MRT based upon Listing 4.02--CHF. Claimant's ejection fraction as noted on the 49 by his physician was previously 10%. Pursuant to updated medical documentation, claimant's ejection fraction is 35 to 40%. Moreover, claimant's prior physical restrictions indicated that claimant could not stand, walk, or sit for more than 2 hours out of an 8-hour work day. Claimant also had restrictions with regards to grasping, reaching, and fine manipulations. See Exhibit 46. However, based upon new medical documentation and another 49, claimant has no restrictions regarding sitting, standing, and walking. With regards to grasping, reaching, pushing, pulling, and fine manipulation, the physician states "no restrictions." See Exhibit 26, 8/5/08. Claimant's condition has improved.

The second prong of the review standard requires a showing that the improvement is related to an individual's ability to engage in work and work-like settings. Taking into account the information found on the 49 on Exhibit 25, claimant is not restricted from work. Based on this report, claimant can lift up to 10 pounds. However, based upon more recent information found on the Rx note which claimant read into the record dated 8/26/08, claimant can regularly lift up to 20 pounds. Thus, medical evidence shows that claimant's improvement is related to his ability to engage in work and work-like settings. Thus, the sequential analysis will be applied.

With regards to the sequential analysis, federal guidelines state in part:

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

At application claimant has the burden of proof pursuant to:

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

...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 sure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development,

or perception. They must also be shown by observable facts that can be medically described and evaluated.

- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

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

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

Applying the sequential analysis herein, claimant is working. Claimant testified that he works approximately 20 hours per week doing odd jobs. Claimant testified that he is only making approximately \$100 per week. Claimant insisted that he works at his own pace, and convenience. Ruling these ambiguities in claimant's favor, this ALJ will find that claimant is not ineligible at the first step of the analysis based upon his current work status. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities in claimant's favor, this Administrative Law Judge (ALJ) finds that claimant meets both. The analysis continues.

The third step of the analysis looks at whether an individual meets or equals one of the Listings of Impairments. 20 CFR 416.920(d). Claimant was previously approved based on Listing 4.02--CHF. The CHF listing in part indicates the listing is met based upon a EF of 30% or less. Claimant's most recent echocardiogram shows an ejection fraction of 35 to 40%. Thus, claimant no longer meets or equals Listing 4.02 and the analysis continues.

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by claimant in the past. 20 CFR 416.920(e).

Claimant identified past relevant work on Exhibit 44 as working as an auto mechanic and in automobile sales. Claimant also testified that he has worked at quick oil changes and as a chauffeur driving a cab. This Administrative Law Judge after careful review of the substantial and credible evidence on the whole record, finds that claimant could return to work in automobile sales and as a driver. This is corroborated by the substantial medical documentation and supported by the requirements found at 20 CFR 416.913(b), .913(d) and .913(e). For these reasons, and for the reasons stated above, continuing eligibility for MA-P and SDA is not shown, and claimant is capable of returning to past relevant work.

It is noted in the alternative that should the fifth step be reached in the application of the Medical Vocational Grids, a finding of not disabled would be required pursuant to Medical Vocational Grid Rule 202.21, and in the alternative 201.29.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions denying claimant continuing MA-P and SDA eligibility were correct.

Accordingly, the department's denial of continuing MA-P and SDA eligibility is hereby UPHELD.

/s/

Janice G. Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 6, 2009

Date Mailed: April 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 mailing date of the rehearing decision.

JGS/cv

cc:

