

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: 2009-4927
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 22, 2009
Alpena County DHS

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

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 April 22, 2009.

ISSUE

Was a recovered physical disability medically established?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds the below material/undisputed facts regarding the claimant:

- (1) Negative action: proposed Medicaid termination on October 28, 2008 per PEM 260.
- (2) Vocational factors: age 45, GED, and past semi-skilled semi truck driver, and shelter workshop jobs for disabled persons.

(3) Disabling symptoms/complaints: unable to perform basic physical work activities as defined below because right leg swells after standing two hours, pinching and tight sensations in left shoulder, unable to raise arm above horizontal level to floor, pain in arms when attempting to reach behind back, cannot move right shoulder, cannot grip things due to right hand deformity, and cannot write with right hand, requires right leg brace prescribed by a doctor.

(4) Substantial gainful work: not performed since February 11, 2009 based on right shoulder discomfort.

(5) Medical reports of exams:

[Physical impairment only]

- (a) [REDACTED] report states the claimant's condition is deteriorating; that he has no physical limitations; that he needs no assistive device for ambulation; and that he can use his lower extremities on a repetitive basis; and that he has a healed right tibia-fibula non-union three years from revision of an open reduction internal fixation with irritation from the hardware (Medical Packet, page 28).
- (b) An [REDACTED] report states the claimant has rescheduled for surgery on [REDACTED] and will need to be off work approximately two to three weeks (Medical Packet, page 9).
- (c) On [REDACTED] report states the claimant continues to work 40 hours a week as a hi-lo driver working at the [REDACTED]; that he denies any problems sitting; that he could stand about one hour and walk about one-eighth of a mile; that he cannot lift more than ten pounds; that he could pick up a coin, button clothing, and open a door; that he had mild difficulty getting on and off the examination table, was able to heel and toe walk and hop on the right, and had moderate difficulty squatting; that straight-leg raising was negative; that range of motion is normal for the cervical spine, dorsal lumbar spine, shoulders, elbows, hips, knees, ankles, wrists and hands—fingers; that lower strength and tone are normal; and that he walks with a moderate right limp without the use of an assistive device (Medical Packet, pages 5 to 7).

- (d) On [REDACTED] SHRT report states the claimant's impairment(s) does not meet/equal Social Security Listings 1.02 or 1.06 (Medical Packet, page 234).

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).

Facts above are undisputed.

"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.

Non-severe impairment(s). An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities. 20 CFR 416.921(a).

Basic work activities. When we talk about basic work activities, we mean 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).

...If medical improvement has occurred, we will compare your current functional capacity to do basic work activities (i.e., your residual functional capacity) based on the previously existing impairments with your prior residual functional capacity in order to determine whether the medical improvement is related to your ability to do work. The most recent favorable medical decision is the latest decision involving a consideration of the medical evidence and the issue of whether you were disabled or continued to be disabled which became final. 20 CFR 416.994(b) (1)(vi).

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).

...To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decision to stop disability benefits are made objectively, neutrally and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be continued at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

The steps are:

Step 1: Does the individual have an impairment which meets or equals the severity of an impairment listed in Appendix 1 of Subpart P of Part 404 of this chapter?

Step 2: If the individual does not, has there been medical improvement, as defined in this section?

Step 3: If there has been medical improvement, is it related to the individual's ability to work?

Step 4: Do any of the exceptions to the medical improvement standard apply?

Step 5: If there has been medical improvement or if an exception to the medical improvement in the first category applies, does the individual currently have physical and/or mental impairments that are severe? If not, disability ends.

Step 6: Does the individual have the residual functional capacity to perform their previous work?

Step 7: Does the individual have the residual functional capacity to perform other work? 20 CFR 416.994(b)(5).

The DHS has the burden of proof to establish by a preponderance of the medical evidence that the claimant has recovered a nondisability.

Step #1 Social Security Listings

The claimant offered no medical evidence addressing the Social Security listed impairment. SHRT determined claimant not disabled under Social Security listings mentioned above. Therefore, continued disability has not been established under this step, and the sequential evaluation continues to Step 2.

Step #2 Medical Impairment

The medicals in the [REDACTED] state that the claimant has no **physical limitations** and contrary to the claimant's symptoms/complaints needs no assistive device (leg brace) for ambulation; that he can use his lower extremities on a repetitive basis; and that he has a healed right tibia-fibula.

The medicals in [REDACTED] state the claimant may be schedule for future surgery and will need to be off work for approximately two to three weeks. This shows before any future surgery that the claimant has a residual functional capacity to work.

The medicals in [REDACTED] do not support any of the claimant's disabling symptoms/complaints. The report states he continues to work 40 hours a week as a hi-lo driver; that he can walk about an eighth of a mile. This is the distance of more than the length of two football fields. Also, this report states the claimant has a normal range of motion of his shoulders, ankles, wrists and hands-fingers. Therefore, contrary to the claimant's disabling symptoms/complaints the medical evidence establishes a substantial improvement in the claimant's physical condition. Therefore, the sequential evaluation continues to Step 3.

Step #3 Residual functional capacity for work

The medical improvement is related to the claimant's residual functional capacity for work as already demonstrated by the above-mentioned medicals. Therefore, the sequential evaluation continues to Step 5, instead of Step 4.

Step #5 Severe physical impairment

The above-mentioned medical is no longer established that the claimant's impairments in combination significantly limit his physical abilities to do basic work activities, as defined above. Therefore, he is no longer considered disabled and the sequential evaluation stops.

Therefore, this ALJ is persuaded that disability no longer continues based on the preponderance of the medical evidence.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that a recovered nondisability was medically established.

Proposed Medicaid termination is UPHELD.

/s/ _____
William A. Sundquist
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 6, 2009

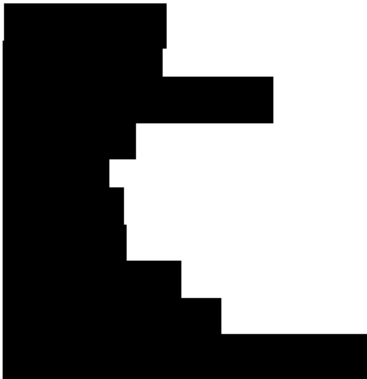
Date Mailed: May 7, 2009

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 receipt 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.

WAS/tg

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