

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: 2009-5070
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 12, 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 March 12, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's continued eligibility for 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 approved for Medical Assistance and State Disability Assistance benefits based upon an enlarged heart, placement of a pacemaker, hypertension and asthma.

(2) Claimant's Medical Assistance and State Disability Assistance benefits case was eligible for medical review in September 2008.

(3) On September 23, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits.

(4) On September 30, 2008, the Medical Review Team denied claimant's continued Medical Assistance and State Disability Assistance benefit receipt stating that claimant has medical improvement.

(5) On October 14, 2008, the department caseworker sent claimant notice that his case would be closed and cancelled effective October 28, 2008 based upon the determination that claimant had medical improvement.

(6) On October 23, 2008, claimant filed a request for a hearing to contest the department's negative action.

(7) On December 4, 2008, the State Hearing Review Team again denied claimant's application stating that it needed additional medical information.

(8) Additional medical information was submitted and sent to the State Hearing Review Team on March 13, 2009.

(9) On April 1, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work and can perform sedentary work per 20 CFR 416.967(a) and light work per 20 CFR 416.967(b).

(10) Claimant is a 40-year-old man whose birth date is [REDACTED]. Claimant is 6' 6-1/2" tall and weighs 435 pounds. Claimant has a GED and is able to read and write and does have basic math skills.

(11) Claimant last worked as a bouncer in 2006. Claimant also worked at [REDACTED] making motorcycle parts.

(12) Claimant alleges as disabling impairments: diabetes mellitus, hypertension, asthma, and enlarged heart.

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 the instant case, claimant is not engaged in substantial gainful activity and has not worked since 2006.

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 instance case, 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, updated medical records indicate that on [REDACTED], claimant presented at the hospital with a chief complaint of difficulty in breathing, wheezing, substernal chest pain and generalized fatigue. Claimant had been recently diagnosed with pneumonia. Claimant was experiencing increased shortness of breath and he was eventually brought to [REDACTED]. The claimant was admitted. He was treated on the general medical floor for further evaluation and treatment. Claimant was ruled out for acute myocardial infarction. However, the claimant was noted to have an ejection fraction of approximately 20 percent. It was thought that the claimant would benefit from an implantable defibrillator. Claimant agreed with the procedure and tolerated it well. He was discharged in improved and stable condition. He was accompanied by a list of discharge medications and told to follow-up with the cardiology team. Because of claimant's age and other comorbidities the claimant's overall prognosis was guarded. (Claimant Exhibits 1 and 2) On [REDACTED] [REDACTED] indicates that claimant has hypertension with congestive heart failure. Claimant has been treated for diabetes mellitus, diabetic neuropathy and low back pain with herniated discs. The claimant has lumbar radiculopathy. Claimant had a low ejection fraction.

Presently he has an intra cardiac defibrillator put in because of the low ejection fraction of congestive heart failure. Claimant has also been treated with medication including Coreg, Digoxin and diuretics for congestive heart failure. The claimant's other diagnoses are degenerative arthritis at the multiple level of the lumbar spine. The claimant also had marked exogenous obesity associated with sleep apnea. Presently he is taking multiple medications for the CHF. For the neurogenic low back pain and lumbar radiculopathy he was taking Vicodin. His prognosis is very poor. The claimant cannot do anything in which he has to sit down for more than a half an hour period of time. When he walks a short distance he gets short of breath because of cardiac decompensation in spite of taking the medication. He cannot bend down nor do any kind of lifting because of low back pain. His medical condition is so bad that he really needs a lot of help at home and with activities of daily living. The claimant's prognosis is poor. He is totally and permanently disabled and I mentioned this to him a month before. He should apply for Social Security. This is one person whose medical condition is so bad that his prognosis is very, very poor. (Page 3) A report of [REDACTED] indicates that claimant was a well developed, well nourished and cooperative individual in no acute distress. Claimant was awake and alert and oriented x3. Claimant was dressed appropriately and answered questions fairly well. Claimant was 6' 6" tall and weighed 440 pounds. His pulse was 88. His respiratory rate was 16. His blood pressure was 176/107. His visual acuity with without glasses was 20/50 and 20/40 on the left. With glasses 20/20 bilaterally. He was normocephalic and atraumatic. His eyelids were normal. He had a history of asthma and was currently using an inhaler. He had a history of hypertension which is still poorly controlled even though he is currently on medication. Claimant had a history of cardiac arrhythmia and was currently on Coumadin. He had a normal sinus rhythm on that date. Based upon the examination, the medical doctor, [REDACTED]

█████ indicated that claimant would be able to occasionally lift and carry 20 to 25 pounds. He would be able to stand or walk about two hours in an eight hour day with frequent breaks. He would be able to sit about six hours in an eight hour day and he would be able to do simple grasping, reaching, pushing and pulling and fine manipulation and he would be able to operate foot and leg controls but would have fatigue with overexertion due to low ejection fraction. A

████████████████████ examination of the chest PA and lateral projections of the chest revealed clear lung fields. The cardiovascular silhouette was within normal limits and the hilar and vascular structures were unremarkable and there was a left-sided pacemaker but no active pulmonary disease. (Page 5) In this case, this Administrative Law Judge finds there has been a decrease in severity of claimant's heart condition as he does have a pacemaker, however, he does have hypertension which is still poorly controlled and requires him to remain on his medication. Claimant is currently using an inhaler for his asthma and he is taking Coumadin for his cardiac arrhythmia. This Administrative Law Judge will find there has not been a decrease in medical severity and some medical improvement.

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 claimant could probably perform light or sedentary work even with his impairments based upon the fact that his Medical Source Opinion indicates that claimant could occasionally carry 20 to 25 pounds and that he could stand or walk about two hours in an eight hour day with frequent breaks and he

would be able to sit for six hours in an eight hour day. He could do simple grasping, reaching, pushing and pulling and fine manipulation and he would be able to operate foot and leg controls but would have fatigue with overexertion due to low ejection fraction.

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, this Administrative Law Judge finds that the residual functional capacity assessment does reveal significant limitations upon claimant's ability to engage in basic work activities at at least the sedentary level.

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 not work as a bouncer or at ██████████ making motorcycle parts with his condition and therefore is not disqualified from receiving disability based upon his prior work.

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 probably perform light or sedentary work based upon his age, education and past work experience. Claimant testified on the record that he can walk less than a block, stand for 15 to 20 minutes and sit for 20 to 30 minutes at a time. Claimant testified he is able to shower and dress himself and tie his shoes if he's sitting but not touch his toes. Claimant testified that he can carry 20 to 30 pounds and 10 pounds on a repetitive basis and that he is right handed and his hands and arms are fine and his legs and feet have arthritis and swelling. Claimant testified that his level of pain on a scale from 1 to 10 without medication is an 8 and with medication is a 2. Claimant testified that in a typical day he gets up and takes his medications, eats and sits around the house and goes to doctors. This Administrative Law Judge finds that because of claimant's low ejection fraction, he would have problems with jobs that require exertion. Based upon claimant's age, education and work experience, claimant would be able to perform light or sedentary work with his impairments only if he continues to receive medical treatment for his conditions.

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).

However, claimant does have chronic heart failure because he's on a regimen prescribed treatment with symptoms and signs described in Listing 4.00D2. The required level of severity for this impairment is met when the requirements in both A and B are satisfied.

- A. Medically documented presence of one of the following:
 - 1. Systolic failure with a left ventricular and diastolic dimensions greater than 6 centimeters or ejection fraction of 30 percent or less during a period of stability (not during an episode of acute heart failure); or
 - 2. Diastolic failure with left ventricular posterior wall plus septal thickness totaling 2.5 centimeters or greater on imaging, with an enlarged left atrium greater than or equal to 4.5 centimeters, with normal elevated ejection fraction during a period of stability;

AND

- B. Resulting in one of the following:
 - 1. Persistent symptoms of heart failure which very seriously limit the ability to independently initiate, sustain or complete activities of daily living in an individual for

whom an MC, preferably one experienced in the care of patients with cardiovascular disease, has concluded that the performance of an exercise test would present a significant risk to the individual; or

2. Inability to perform on an exercise tolerance test at a workload equivalent to 5 METs or less due to:
 - a. Dyspnea, fatigue, palpitations, or chest discomfort; or
 - b. Three or more consecutive premature ventricular contractions or increasing frequency of ventricular ectopy with at least 6 premature ventricular contractions per minute; or
 - c. Signs attributable to inadequate cerebral perfusion, such as ataxic gait or mental confusion.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the claimant does not have medical improvement and is still disabled for purposes of State Disability Assistance and Medical Assistance benefits.

Accordingly, the department's decision is REVERSED. Claimant's Medical Assistance and State Disability Assistance benefits should be reinstated for the foregoing reasons.

/s/

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

Date Signed: April 27, 2009

Date Mailed: April 27, 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:

