

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: 2009-7464

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 25, 2009

St. Joseph County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 Wednesday, March 25, 2009. The claimant personally appeared and testified on his own behalf.

ISSUE

Did the department properly determine that the claimant has not established continued eligibility for disability under the Medical Assistance (MA-P) and State Disability Assistance (SDA) programs?

FINDINGS OF FACT

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

(1) On October 9, 2006, the Medical Review Team (MRT) approved the claimant for Medical Assistance and State Disability Assistance retroactive to September 2006 with a medical review requested October 2007. The claimant was denied retroactive Medical Assistance to April 2006 because of a Social Security Administration Administrative Law Judge denial in May 2006.

(2) On October 23, 2008, the Medical Review Team (MRT) denied the claimant Medical Assistance and retroactive Medical Assistance that under medical review of continued eligibility for MA disabled under 20 CFR 416.994 and for SDA that the claimant's physical and mental impairment does not prevent employment for 90 days or more.

(3) On October 28, 2008, the department caseworker sent the claimant a notice that his application was denied.

(4) On October 31, 2008, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On January 8, 2009, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA-P and SDA eligibility for the claimant. The SHRT report reads in part:

This is a medical review of MA-P and SDA benefits. The prior approval is not attached, however, it is noted that the claimant was denied disability benefits by the Social Security Administration Administrative Law Judge on [REDACTED]. Therefore, his MA-P and SDA benefits would end and we would not have to show medical improvement. Current exam showed he had 4/5 motor strength in the left foot and lack of sensation to light touch in the L5 distribution in the left leg. However, he had normal grip, dexterity, and gait. There was no evidence of congestive heart failure on exam and no evidence of end organ damage. The claimant would be capable of doing light work.

The claimant's previous MA-P and SDA benefits are denied based on a Social Security Administration Administrative Law Judge denial in October 2008. Currently, 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 (younger individual, 12<sup>th</sup> grade education, and unknown work history), MA-P is denied using Vocational Rule 202.20 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.

(6) During the hearing on March 25, 2009, the claimant requested permission to submit additional medical information that needed to be reviewed by SHRT. Additional medical information was received from the local office on March 30, 2009 and forwarded to SHRT for review on April 17, 2009.

(7) On April 29, 2009, the SHRT considered the newly submitted objective medical evidence in making its determination of MA-P and SDA. The SHRT report reads in part:

This is a medical review of MA-P and SDA benefits. The prior approval is not attached, however, it is noted that the claimant was denied disability benefits by the Social Security Administration Administrative Law Judge on [REDACTED]. Therefore, his MA-P and SDA benefits would end and we would not have to show medical improvement. The most recent exam in [REDACTED] showed the claimant had no significant weight loss or any trouble maintaining proper nutrition. His exam was basically unremarkable. The claimant complained of numbness in the feet, but his gait was normal. His neurological findings were unremarkable. The claimant would be able to do light work.

The claimant's previous MA-P and SDA benefits are denied based on a Social Security Administration Administrative Law Judge denial in October 2008. Currently, 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 (younger individual, 12<sup>th</sup> grade education, and unknown work history), MA-P is denied using Vocational Rule 202.20 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.

(8) The claimant is a 34 year-old man whose date of birth is [REDACTED]. The claimant is 5' 9" tall and weighs 245 pounds. The claimant has a high school diploma. The claimant can read and write and do basic math. The claimant has no pertinent work history.

(9) The claimant's alleged impairments are ulcerative colitis, diabetes, low back pain, degenerative disc disease, ileostomy, high blood pressure, hypercholesterolemia, and depression.

#### 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).

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 substantially gainfully employed and has no pertinent work history. Therefore, the claimant is not disqualified from receiving disability at Step 1.

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 this case, the claimant’s impairments or combination of impairments do not meet or equal the severity of an impairment listed in Appendix 1. Therefore, the claimant is disqualified from receiving disability at Step 2.

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, the claimant has had medical improvement resulting in a decrease in medical severity. On [REDACTED], the claimant was seen by his treating physician. The claimant had an increase of pain in the back and was having left foot pain from an old injury. The claimant was feeling anxious due to medical problems. The treating physician's assessment was back pain, anxiety, and type II diabetes. (Department Exhibit 7)

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant was seen for problems with abdominal pain and elevated blood sugar of 740 where he was unable to keep anything down. The claimant was given IV fluids and an insulin drip. The claimant's sugar came down over two days of hospitalization without a great deal of difficulty. The claimant was adequately hydrated where he felt much better the second day, but still had residual discomfort in the abdomen and slightly elevated lipase. The claimant's cholesterol at the time of discharge was 241 with triglycerides of 585 where he was at a high risk for a myocardial infarction. There was no evidence of abdominal tenderness at palpation at time of discharge and his vitals were stable. The claimant's sugar was down to the 170-190 area at the time of discharge. (Department Exhibit 62 and 55-56)

On [REDACTED], the claimant was seen at [REDACTED] as the result of severe epigastric pain since the previous day. The claimant had a past medical history of type II diabetes, diabetic neuropathy, hypertension, hyperlipidemia, history of ulcerative colitis, degenerative joint disease of the LS-spine, gastroesophageal reflux disease, obstructive sleep apnea, and depression. The claimant had a normal physical examination except that he was obese. The treating emergency room physician's assessment was acute pancreatitis, type II diabetes, hypertension, and gastroesophageal reflux disease. The claimant was given a clear liquid diet and he had a guarded prognosis. The CT scan showed minimal findings of pancreatitis surrounding the head of the pancreas and showed diffuse fatty replacement of the liver.

(Department Exhibit 98-100 and 57-58)

On [REDACTED], the claimant was seen by a treating specialist at the [REDACTED]. The claimant had uncontrolled type II diabetes. The claimant was counseled to watch his diet and to check his blood sugar four times a day. (Department Exhibit 102-103)

On [REDACTED], the claimant was seen by a treating specialist with a chief complaint of uncontrolled insulin-dependent diabetes mellitus. The claimant had a normal physical examination except that he was obese. The treating specialist's impression was insulin-dependent diabetes mellitus type II that was poorly controlled, diabetic peripheral neuropathy, hypertension, hypercholesterolemia, depression, history of ulcerative colitis, S/P total colectomy with ileostomy, degenerative joint disease of the lumbosacral spine, gastroesophageal reflux disease, obstructive sleep apnea, and obesity (BMI=38). The claimant was advised to check his blood sugars four times a day with a dietary consult and exercise on a regular basis for weight control through diet and exercise. The claimant was required to daily inspect his feet in a mirror and seek medical attention for any abnormality or infection. (Department Exhibit 69-72)

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant's discharge diagnosis was left S1 radiculopathy and insulin-dependent diabetes. The claimant underwent a left L5/S1 laminectomy for microdiscectomy. The claimant noted improvement of his preoperative back pain with left lower extremity radiating pain. The claimant ambulated well and his pain was under control with oral pain medication. (Department Exhibit 17-18)

At Step 3, the objective medical evidence on the record indicates that the claimant has had medical improvement. The claimant had surgery on [REDACTED], which relieved his lower back pain. The claimant's diabetes continued to be out of control, but the claimant was advised to assist with the control of his diabetes through reduction of weight, diet, and exercise. Therefore, the claimant is disqualified from receiving disability at Step 3.

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 improvement in the claimant's condition as presented at the time of the most favorable determination. The claimant's medical improvement is related to his ability to perform work. (See analysis at Steps 1, 2, and 3 above.)

At Step 4, this Administrative Law Judge finds that the claimant's medical improvement is related to his ability to perform work. (See analysis at Steps 1, 2, 3, and 4 above.) 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, the Administrative Law Judge finds the claimant retains the residual functional capacity to perform light work. Therefore, the claimant is disqualified from receiving disability at Step 6.

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.

The claimant does have a driver's license and does drive. The claimant does have issues with his back where he has tingling and numbness in his legs and feet. The claimant cooks three to four times a week with no problem. The claimant grocery shops twice a month with no problem. The claimant does clean his own home by sweeping. The claimant doesn't do any outside work or have any hobbies. The claimant does not think his condition has worsened in the past year. The claimant stated that he has depression where he is currently taking medication, but not in therapy.

The claimant wakes up between 9:00 to 10:00 a.m. He sits around and watches TV. He monitors his diabetes four times a day. He picks up his son from school. He goes to bed between 11:00 p.m. to 12:00 a.m.

The claimant felt he could walk one mile. The longest he felt he could sit and stand was 30 minutes. The heaviest weight the claimant felt he could carry was 10 pounds. The claimant stated that his level of pain on a scale of 1 to 10 without medication was a 9 that decreases to a 6 with medication. The claimant does not smoke or has ever smoked. He stopped drinking when he was 21 years old and before that he did not drink much. The claimant has not and is not currently taken illegal or illicit drugs. The claimant stated that there was no work that he thought he could do.

In this case, the Administrative Law Judge finds that the claimant retains the capacity to perform at least light work. The claimant has no pertinent work history. However, the claimant had surgery in [REDACTED] on his lower back. He has continued to work at controlling his diabetes. He is taking medication for his depression, but is not in therapy. Therefore, the claimant does retain the capacity to perform light work and is denied at Step 7. (See analysis at Steps 1, 2, 3, 4, and 6 above.)

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, the claimant does retain the residual functional capacity to perform light work under Medical-Vocational Rule 202.20. (See prior analysis in Steps 1, 2, 3, 4, 6, and 7.) Therefore, the claimant is disqualified from receiving continued Medical Assistance benefits because he does have medical improvement. The record does not establish that the claimant is unable to work for a period exceeding one year and that the claimant does not meet the disability criteria for continued Medical Assistance benefits.

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 department's Program Eligibility Manual provides the following policy statements and instructions for caseworkers regarding the SDA program.

## **DISABILITY – SDA**

### **DEPARTMENT POLICY**

#### **SDA**

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older.

**Note:** There is no disability requirement for AMP. PEM 261, p. 1.

#### **DISABILITY**

A person is disabled for SDA purposes if he:

- . receives other specified disability-related benefits or services, or
- . resides in a qualified Special Living Arrangement facility, or
- . is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- . is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. PEM, Item 261, p. 1.

#### **Other Benefits or Services**

Persons receiving one of the following benefits or services meet the SDA disability criteria:

- . Retirement, Survivors and Disability Insurance (RSDI), due to disability or blindness.
- . Supplemental Security Income (SSI), due to disability or blindness.
- . Medicaid (including spend-down) as blind or disabled if the disability/blindness is based on:
  - .. a DE/MRT/SRT determination, or
  - .. a hearing decision, or
  - .. having SSI based on blindness or disability recently terminated (within the past 12 months) for financial reasons.

Medicaid received by former SSI recipients based on policies in PEM 150 under "**SSI TERMINATIONS, INCLUDING 'MA While Appealing Disability Termination,'**" does not qualify a person as disabled for SDA. Such persons must be certified as disabled or meet one of the other SDA qualifying criteria. See "**Medical Certification of Disability**" below.

- . Michigan Rehabilitation Services (MRS). A person is receiving services if he has been determined eligible for MRS and has an active MRS case. Do not refer or advise applicants to apply for MRS for the purpose of qualifying for SDA.
- . Special education services from the local intermediate school district. To qualify, the person may be:
  - .. attending school under a special education plan approved by the local Individual Educational Planning Committee (IEPC); **or**
  - .. not attending under an IEPC approved plan but has been certified as a special education student **and** is attending a school program leading to a high school diploma or its equivalent, **and** is under age 26. The program does not have to be designated as "special education" as long as the person has been certified as a special education student. Eligibility on this basis continues until the person completes the high school program or reaches age 26, whichever is earlier.

- Refugee or asylee who lost eligibility for Social Security Income (SSI) due to exceeding the maximum time limit PEM, Item 261, pp. 1-2.

Therefore, the claimant is disqualified from receiving SDA benefits because he does have medical improvement. The record does not establish that the claimant is unable to work for a period exceeding 90 days. The claimant does not meet the disability criteria for continued SDA because he does have medical improvement.

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 that it was acting in compliance with department policy when it denied the claimant's medical review for MA-P and SDA to determine the claimant was no longer eligible for continued disability benefits. The claimant should be able to perform a wide range of light work. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is **AFFIRMED**.

/s/  
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Carmen G. Fahie  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: September 2, 2009

Date Mailed: September 2, 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.

CGF/vmc

cc:

