

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: 2009-11982

Issue No: 2009, 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 28, 2009

Midland County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 April 28, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services properly determine that Claimant no longer met the disability standard for Medical Assistance based on disability (MA-P) and State Disability Assistance (SDA)?

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 May 31, 2008, Claimant's right leg was amputated below the knee.
- (2) On July 21, 2008, Claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).

(3) On August 18, 2008, the Department of Human Services Medical Review Team determined that Claimant was disabled in accordance with the standards for Medical Assistance (MA) or State Disability Assistance (SDA).

(4) On December 12, 2008, the Department Medical Review Team reviewed Claimant's case and determined he was no longer disabled for purposes of Medical Assistance (MA) based on disability or State Disability Assistance (SDA).

(5) On December 18, 2008, Claimant was sent notice of the Department's determination.

(6) On January 5, 2009, Claimant submitted a request for hearing.

(7) On June 4, 2009, the State Hearing Review Team determined that Claimant was no longer disabled in accordance with the standards for Medical Assistance (MA) or State Disability Assistance (SDA).

(8) Claimant is a 37 year old male. Claimant is 76 inches tall and weighs approximately 200 pounds. Claimant's formal education consists of 12 years of school.

(9) Claimant has past relevant work as an automobile mechanic and a pool and hot tub technician.

(10) Claimant has been diagnosed with diabetes. Claimant asserts continuing disability based on complications from his diabetes including amputation of his right leg below the knee.

(11) Claimant last worked in December 2007 as a pool and hot tub technician. Claimant reports he left that employment because of medical reasons.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manuals (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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manuals (PRM).

Once an individual has been determined to be “disabled” for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. The purpose of the review is to determine if your medical condition still meets the Social Security Administration disability standard. There are two main factors used in deciding whether your disability continues. One is your current medical condition. The other is whether you can engage in any substantial gainful activity. 20 CFR 416.994

In evaluating whether your disability continues any current work activities, any medical improvement in your previous impairments, and the severity of your current impairment(s) are assessed. Review may cease and benefits may be continued at any point if there is substantial evidence to find that you are unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

The starting point of the review is to determine if you are currently engaged in substantial gainful activity. Substantial gainful activity is defined as work activity: that is both substantial

and gainful; and involves doing significant physical or mental activities. Gainful work activity is work activity that you do for pay or profit (20 CFR 416.972). If you are engaged in substantial gainful activity, that fact establishes that you are capable of working and you are no longer disabled.

During this hearing Claimant testified that he has not worked since 2006 and presently stays around the house watching television. A medical examination on March 16, 2009 lists Claimant as being employed at [REDACTED]. While that evidence raises questions about Claimant's work history it is insufficient to determine that Claimant engaged in substantial gainful activity while he was asserting disability. Based on the direct evidence in the record, it is found that Claimant is not engaged in substantial gainful activity.

If you are not engaged in substantial gainful activity an evaluation is done using the evidence in the record. The sequential seven step evaluation is contained in 20 CFR 416.994(b)(5).

- (5) *Evaluation steps.* 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 decisions 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. The steps are as follows. (See paragraph (b)(8) of this section if you work during your current period of eligibility based on disability or during certain other periods.)
 - (i) *Step 1.* Do you have an impairment or combination of impairments which meets or equals the severity of an impairment listed in appendix 1 of subpart P of part 404 of this chapter? If you do, your disability will be found to continue.

- (ii) *Step 2.* If you do not, has there been medical improvement as defined in paragraph (b)(1)(i) of this section? If there has been medical improvement as shown by a decrease in medical severity, see step 3 in paragraph (b)(5)(iii) of this section. If there has been no decrease in medical severity, there has been no medical improvement. (See step 4 in paragraph (b)(5)(iv) of this section.)
- (iii) *Step 3.* If there has been medical improvement, we must determine whether it is related to your ability to do work in accordance with paragraphs (b)(1)(i) through (b)(1)(iv) of this section; *i.e.*, whether or not there has been an increase in the residual functional capacity based on the impairment(s) that was present at the time of the most recent favorable medical determination. If medical improvement is *not* related to your ability to do work, see step 4 in paragraph (b)(5)(iv) of this section. If medical improvement *is* related to your ability to do work, see step 5 in paragraph (b)(5)(v) of this section.
- (iv) *Step 4.* If we found at step 2 in paragraph (b)(5)(ii) of this section that there has been no medical improvement or if we found at step 3 in paragraph (b)(5)(iii) of this section that the medical improvement is not related to your ability to work, we consider whether any of the exceptions in paragraphs (b)(3) and (b)(4) of this section apply. If none of them apply, your disability will be found to continue. If one of the first group of exceptions to medical improvement applies, see step 5 in paragraph (b)(5)(v) of this section. If an exception from the second group of exceptions to medical improvement applies, your disability will be found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process.
- (v) *Step 5.* If medical improvement is shown to be related to your ability to do work or if one of the first group of exceptions to medical improvement applies, we will determine whether all your current impairments in combination are severe (see [§416.921](#)). This determination will consider all your current impairments and the impact of the combination of these impairments on your ability to function. If the residual functional capacity assessment in step 3 in paragraph (b)(5)(iii) of this section shows significant limitation of your ability to do basic work activities, see step 6 in paragraph

(b)(5)(vi) of this section. When the evidence shows that all your current impairments in combination do not significantly limit your physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature. If so, you will no longer be considered to be disabled.

- (vi) *Step 6.* If your impairment(s) is severe, we will assess your current ability to do substantial gainful activity in accordance with [§416.960](#). That is, we will assess your residual functional capacity based on all your current impairments and consider whether you can still do work you have done in the past. If you can do such work, disability will be found to have ended.
- (vii) *Step 7.* If you are not able to do work you have done in the past, we will consider one final step. Given the residual functional capacity assessment and considering your age, education, and past work experience, can you do other work? If you can, disability will be found to have ended. If you cannot, disability will be found to continue.

At this step it is determined whether you have 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. If your impairment or combination of impairments meet or equal the severity of an impairment listing, your disability will be found to continue.

In order to make this determination the evidence showing your current medical condition must be evaluated. Claimant asserts continuing disability based upon complications with his amputation and not having a properly fitted prosthesis that he can use effectively. At the time of this hearing Claimant testified that he still has the temporary and has not received a permanent one and is only able to wear the temporary one for one to two hours. Evidence in the record of Claimant's current medical condition includes:

The most recent evidence is a medical examination done on March 16, 2009 by [REDACTED]

[REDACTED] (pages 39 & 40) The examination was done when Claimant had swelling and

abscess at his amputation point. Claimant reported, and the examination also states, that surgery was done the next day for irrigate and debriment of the area.

There is also a report dated February 11, 2009 by [REDACTED] (page 42) On that date the Doctor removed fluid which had collected at Claimant's amputation point.

There is also a report dated September 15, 2008 by [REDACTED] (page 43) On that date the Doctor recorded that Claimant's incision was well healed and there was no swelling. It was also recorded that Claimant was back racing cars and doing well.

There is also a report dated August 4, 2008 by [REDACTED] (page 44) On that date the Doctor recorded that Claimant's incision was well healed, there was no erythema, and there was no swelling. It was also recorded that Claimant's pain was well controlled and he had participated in a race.

There is also a report dated July 7, 2008 by [REDACTED] (page 45) On that date the Doctor recorded that Claimant's incision was well healed, there was no erythema, and there was no swelling. The report gave a plan to begin weight-bearing and continue the prosthesis fitting process.

Claimant's impairment was compared with the Social Security Administration impairment listing 1.05. That listing is:

1.05 Amputation (due to any cause).

A. Both hands; or

or

B. One or both lower extremities at or above the tarsal region, with stump complications resulting in medical inability to use a prosthetic device to ambulate effectively, as defined in 1.00B2b, which have lasted or are expected to last for at least 12 months;

or

- C. One hand and one lower extremity at or above the tarsal region, with inability to ambulate effectively, as defined in 1.00B2b; OR
- D. Hemipelvectomy or hip disarticulation.

Claimant's amputation did not meet or equal this listing. Although the objective medical evidence shows that Claimant has stump complications which prevent him from using a prosthetic device, there is no objective medical evidence that shows a period of at least 12 months during which Claimant was unable to use a prosthetic device.

In this step we determine whether there has been medical improvement in your previous impairments. Medical improvement is defined in 20 CFR 416.994(b)(1)(i). 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 evaluation proceeds to Step 3. If there has been no decrease in medical severity and thus no medical improvement, the evaluation skips Step 3 and proceeds to Step 4.

At the time of the most recent favorable medical decision Claimant was recovering from the May 2008 amputation of his right leg below the knee. Claimant was unable to ambulate using a prosthetic device or take care of his personal needs. The objective medical evidence in the record for this hearing shows that Claimant had a period of approximately 6 months (July-December 2008) during which he was improving and began to effectively use a prosthetic device. However, in January 2009 complications began with swelling and fluid build up at the point of amputation. In March 2009 Claimant had surgery to irrigate and debride tissue at the

point of amputation. At the time of this hearing, April 2009, Claimant provided credible testimony that he was only able to use a temporary prosthetic device for one to two hours before it caused irritation of the area and pain. While the objective medical evidence shows that Claimant had a short period of medical improvement, at the time of this hearing his condition had deteriorated and he was still unable to use a prosthetic device to ambulate or take care of his personal needs. There has been no medical improvement in Claimant's previous impairments. The evaluation proceeds to Step 4.

If there has been medical improvement as shown by a decrease in medical severity, this step of the evaluation is done to determine if the medical improvement is related to your ability to work. In this case there has been no medical improvement and this step is not necessary.

If Step 2 determined that there was no medical improvement, or Step 3 determined your medical improvement was not related to your ability to work, this step of the sequential evaluation is done to determine whether any of the exceptions in 20 CFR 416.994(b)(3) and (b)(4) apply to you. If none of the exceptions applies to you, your disability will be found to continue.

The first group of exceptions to medical improvement are found in 20 CFR 416.994(b)(3). If any of this first group of exceptions applies to you, the evaluation will proceed to Step 5. The first group of exceptions is:

- (i) Substantial evidence shows that you are the beneficiary of advances in medical or vocational therapy or technology (related to your ability to work).
- (ii) Substantial evidence shows that you have undergone vocational therapy (related to your ability to work).

- (iii) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques your impairment(s) is not as disabling as it was considered to be at the time of the most recent favorable decision.
- (iv) Substantial evidence demonstrates that any prior disability decision was in error.

The second group of exceptions to medical improvement are found at 20 CFR 416.994(b)(4). If any of the second group of exceptions applies to you, your disability will be found to have ended. The second group of exceptions is:

- (i) A prior determination or decision was fraudulently obtained.
- (ii) You do not cooperate with us.
- (iii) We are unable to find you.
- (iv) You fail to follow prescribed treatment which would be expected to restore your ability to engage in substantial gainful activity.

None of these exceptions apply to Claimant and disability is found to continue. No further analysis is required in this case.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services DID NOT properly determine that Claimant no longer meets the disability standard for Medical Assistance based on disability (MA-P) and State Disability Assistance (SDA). In Medical Review cases the Department has the burden of proof to show that the Claimant is no longer disabled. That burden has not been met in this case.

It is ORDERED that the actions of the Department of Human Services, in this matter, are REVERSED.

It is further ORDERED that Claimant's disability will be medically reviewed in June 2010.

/s/ _____
Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 13, 2010

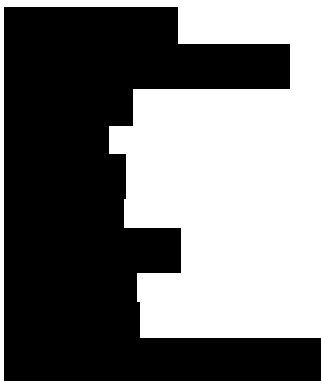
Date Mailed: April 13, 2010

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.

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.

GFH/alc

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