

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: 2009-14785
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 3, 2009
Mecosta 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, June 3, 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) program?

FINDINGS OF FACT

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

(1) In October 15, 2007, the claimant applied for MA-P with retroactive MA-P to July 2007.

(2) On December 27, 2007, the Medical Review Team (MRT) approved the claimant for Medical Assistance with retroactive Medical Assistance to July 2007 with a medical review date requested January 2009 based on the claimant not capable of performing other work.

(3) On January 14, 2009, the MRT denied the claimant for MA-P based on the claimant not being eligible for continued MA-P based on disability.

(4) On January 16, 2009, the department caseworker sent the claimant a notice that his application was denied.

(5) On February 3, 2009, the department received a hearing request from the claimant, contesting the department's negative action.

(6) On March 19, 2009, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA-P and retroactive MA-P eligibility for the claimant. The SHRT report reads in part:

The claimant is on a January 2009 medical review of benefits previously granted due to meeting or equaling a listing or per a Vocational Rule. The claimant is 33 years old with 12 years of education with a history of unskilled work. The claimant alleged disability due to epilepsy and mild schizophrenia. The claimant did not meet applicable Social Security Listings 11.01 and 12.01. The claimant is capable of performing other work under medical improvement to sedentary, light, medium, and unskilled.

(7) The claimant is a 33 year-old man whose date of birth is [REDACTED]. The claimant is 6' tall and weighs 250 pounds. The claimant has a high school diploma and two years of college. The claimant can read and write and do basic math. The claimant is currently

employed as a hotel night auditor at 24-32 hours per week making [REDACTED] per month. The claimant was also employed a press operator, laborer, welder, and robot operator.

(8) The claimant's alleged impairments are epilepsy and mild schizophrenia.

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 employed, but depending on the month may not be because his pay ranges from [REDACTED] which is not substantial gainful employment, to [REDACTED] which is substantial gainful employment. Therefore, the claimant may be 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, there has been a decrease in medical severity. The claimant was hearing voices and had an unstable mood. The objective medical evidence on the record indicates that the claimant is no longer hearing voices as cited by his physician's assistant on [REDACTED] and [REDACTED] and had excellent mood stability with no seizures. (Department Exhibit 64-55)

At Step 3, the objective medical evidence on the record indicates that on [REDACTED] [REDACTED] the claimant's treating physician completed a Medical Examination Report, DHS-49, for the claimant. The claimant was first examined on [REDACTED] and last examined on [REDACTED]. The claimant had a history of impairment and chief complaint that started in 1998 or 1999 with auditory hallucinations and a seizure in [REDACTED]. The claimant's current diagnosis is bipolar disorder versus schizoaffective disorder versus paranoid schizophrenia with hyperlipidemia, obstructive sleep apnea, and seizures. The claimant had a normal examination. (Department Exhibit 67)

The claimant's treating physician's clinical impression was that the claimant was stable with no physical limitations. The claimant was mentally limited in social interaction secondary to schizophrenia. The claimant can meet his needs in the home. (Department Exhibit 66)

Therefore, the claimant is disqualified from receiving disability at Step 3 because he has had 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 the claimant had had medical improvement.

At Step 4, this Administrative Law Judge finds that the claimant has had medical improvement related to his ability to do work. The claimant is currently employed as a hotel night auditor some months of substantial gainful employment working 24-32 hours per week. Thus, this Administrative Law Judge finds that the claimant has the 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, the Administrative Law Judge finds the claimant retains the residual functional capacity to perform medium work. The claimant was previously employed as a press operator, laborer, welder, and robot operator. The claimant is currently employed as a hotel night auditor. Therefore, the claimant retains the capacity to perform his past relevant work.

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 drives with no problem. The claimant cooks once or twice a week where he makes breakfast. The claimant does not grocery shop or clean his own home. He does help split wood in the winter. His hobby is fishing. The claimant felt his condition has not really worsened because of his medication. The claimant stated that he is currently taking medication, but not in therapy for his mental impairment.

The claimant wakes up between 4:00 to 9:00 a.m. He studies. He has breakfast. He goes to bed if he doesn't have work. He studies some more and helps around the house. He goes to bed between 6:00 to 7:00 p.m. The claimant does not have a problem walking, standing, sitting, and lifting weight. The claimant felt his level of functioning without his medication was a 1-2, but increased to an 8 with medication.

The claimant smokes a pack of cigarettes a day. The claimant occasionally drinks alcohol. The claimant stopped smoking marijuana in 2006-2007. The claimant felt that he could do the work that he is doing now of accounting.

In this case, the Administrative Law Judge finds that the claimant retains the capacity to perform skilled, detailed, medium work. The claimant is currently employed as a hotel night auditor working 24-32 hours per week. The claimant is currently taking his medication, but not in therapy. The claimant has had significant improvement while on his medication. Therefore, the claimant does retain the capacity to perform his past relevant work and is denied at Step 7.

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 skilled, detailed, medium work under Medical-Vocational Rule 203.30.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as epilepsy and mild schizophrenia.

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 continually disabled for Medical Assistance benefits.

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 Medical Assistance and retroactive Medical Assistance to determine the claimant was no longer eligible for continued disability benefits. The claimant should be able to perform skilled, detailed, medium work. The claimant no meets the disability criteria for continued Medical Assistance benefits. The department has established its case by a preponderance of the evidence.

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

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

Date Signed: September 25, 2009

Date Mailed: September 25, 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:

