

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: 2009-20122
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 4, 2009
Baraga 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 August 4, 2009.

The below D&O was delayed for a second SHRT review of additional medical reports presented at the hearing (Claimant Exhibits A and B).

ISSUE

Was a recovered nondisability established?

FINDINGS OF FACT

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

(1) Negative case action: Medicaid/SDA termination on November 12, 2008 was based on a recovered nondisability per PEM 260/261.

(2) Original approval: October 2007 based on a physical colostomy repair.

(3) Vocational factors: age 49, 10th grade education, and has an unskilled work history.

(4) Disabling symptoms/complaints: Unable to work because of diabetes with problems with feet and legs, poor circulation, bowel surgery, asthma, and emphysema.

(5) Medical reports of exams on:

Mental Impairments

- (a) March 18, 2008 states the claimant has no mental limitations (Medical Packet, page 11).
- (b) August 25, 2008 states the claimant was in no acute distress (Claimant Exhibit A, page 1).
- (c) July 2, 2009 states the claimant is mildly limited in the ability to understand and carry out simple instructions; that he is moderately limited in ability to make judgments on simple work-related decisions; that he has the ability to interact appropriately with supervision, coworkers, as well as respond to changes in a routine work setting. (Claimant Exhibit B, page 27.)

Physical Impairments

- (d) March 18, 2008 states the claimant's Fournier's gangrene has improved; that the claimant has no **physical limitations**; and can use his extremities on a repetitive basis (Medical Packet, page 12).
- (e) March 18, 2008 states the claimant had a colostomy for Fournier's gangrene (Medical Packet, page 60).
- (f) August 25, 2008 states the claimant has a colostomy and ventral hernia, but in no acute distress (Claimant Exhibit A, page 1).
- (g) September 23, 2008 states the claimant is doing pretty well following his colostomy (Medical Packet, page 14).
- (h) May 5, 2009 SHRT report states the claimant's impairment(s) do not meet/equal a Social Security Listing (Medical Packet, page 2).

- (i) July 2, 2009 states the claimant can occasionally lift up to 10 pounds; that he can occasionally reach overhead; that he can frequently operate foot controls; that he can occasionally climb stairs and ramps, balance, sweep, and crouch (Claimant Exhibit B, page 27).

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).

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).

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.

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.

...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).

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).

...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. 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. 20 CFR 416.994(b)(5)(i).

Step 2. If you do not, has there been a 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.) 20 CFR 416.994(b)(5)(ii).

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 5 in paragraph (b)(5)(v) of this section. 20 CFR 416.994(b)(5)(iii).

Step 4. If we found in 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 any 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. 20 CFR 416.994(b)(5)(iv).

Step 5. If medical improvement is shown to be related to your ability to do work or if any of the first group of exceptions to medical improvement applies, we will determine whether all your current impairments in combination are severe (see Sec. 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 to your ability to do basic work activities, see Step 6 in paragraph (b)(5)(iv) 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 disabled. 20 CFR 416.994(b)(5)(v).

Step 6. If your impairment(s) is severe, we will assess your current ability to engage in substantial gainful activity in accordance with 416.961. That is, we will assess your residual functional capacity based on all your current impairments and consider whether you can still do work that you have done in the past. If you can do such work, disability will be found to have ended. 20 CFR 416.994(b)(5)(vi).

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. 20 CFR 416.994(b)(5)(vii).

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 Listing

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

This step determines whether the claimant's impairment(s) in combination meet a Social Security Listing. The objective medical evidence of record does not establish a Social Security Listing. The claimant offered no evidence specifically addressing any Social Security Listing by a physician. The SHRT medical physician determined that claimant did not meet a Social Security Listing. Therefore, the analysis continues to the next step.

Step 2: Medical Improvement

Medical improvement. Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued 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 your impairment(s)... 20 CFR 416.994(b)(1)(i).

(Mental)

The objective medical evidence of record states the claimant has no mental limitations; that he is in no acute distress; and that he is only mildly to moderately limited in ability to understand, carry out simple instructions, and ability to make judgments.

Therefore, the medical improvement is related to the claimant's ability to do work.

(Physical)

The objective medical evidence of record states the claimant has no physical limitations; and that his Fournier's gangrene has improved. Medical improvement is related to claimant's ability to work.

Therefore, the sequential evaluation continues to the next step.

Step 3: Medical Improvement Related to Ability to Work

(Mental)

The objective medical evidence of record states the claimant has no mental limitations; that he is in no acute distress; and that he is only mildly limited in ability to understand, remember and carry out job directions to do work, and the analysis continues to Step 5.

(Physical)

The medicals of record state the claimant no longer has physical limitations.

Therefore, medical improvement is related to the claimant's ability to do work, and the sequential analysis is, now, required to continue to Step 5.

Step 5: Residual Functional Capacity for Basic Work Activities

This step determines whether the medical improvement establishes the claimant's current impairments in combination no longer limit his mental or physical abilities to do basic work activities as defined above.

The above-mentioned medicals show the claimant no longer has a severe mental/physical impairment. Therefore, disability ends.

Therefore, this ALJ is persuaded by the preponderance of the medical evidence of record that a recovered nondisability was established.

DECISION AND ORDER

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

Accordingly, Medicaid termination is UPHELD.

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

Date Signed: November 17, 2009

Date Mailed: November 17, 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

cc:

