

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: 2009-21904

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 1, 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 July 1, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (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) Claimant was a Medical Assistance benefit recipient and his Medical Assistance case was scheduled for review in January 2008.

(2) On March 2, 2009, claimant filed a review application for Medical Assistance and State Disability Assistance benefits alleging continued disability.

(2) On March 12, 2009, the Medical Review Team denied claimant's application stating that claimant had medical improvement.

(3) On March 27, 2009, the department caseworker sent claimant notice that his Medical Assistance case would be cancelled based upon medical improvement.

(4) On April 3, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On May 20, 2009, the State Hearing Review Team again denied claimant's review application stating that claimant is capable of performing other work and could perform light work per 20 CFR 416.967(b) pursuant to Medical-Vocational Rule 202.13 and commented that 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. Therefore, based on the claimant's vocational profile of closely approaching advanced age with a limited education, MA-P is denied using Vocational Rule 202.13 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

(6) The hearing was held on July 1, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was received and sent to the State Hearing Review Team on July 2, 2009.

(8) On July 8, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) pursuant to Medical-Vocational Rule 202.13 and commented that an ability to do work-related activities form dated 2006 was submitted. The only objective evidence submitted to support the extensive limitations given was a comment about 2004 MRI findings. The new information does not significantly change or alter the previous decision. The claimant's treating physician has given less than sedentary work restrictions based upon the claimant's physical impairments. However, this medical source opinion (MSO) is inconsistent with the great weight of the objective medical evidence and per 20 CFR 416.927c(2)(3)(4) and 20 CFR 416.927d(3)(4)(5), will not be given controlling weight. The collective objective medical evidence shows that the claimant is capable of performing light work.

(9) Claimant is a 51-year-old man whose birth date is [REDACTED] Claimant is 6' 1-1/2" tall and weighs 190 pounds. Claimant attended the 11th grade and has no GED. Claimant is able to read and write but has problems with comprehension and is able to add and subtract and count money.

(10) Claimant last worked November 2004 as a janitor. Claimant has also worked as a general laborer.

(11) Claimant was receiving Medical Assistance and State Disability Assistance and lives in subsidized housing.

(12) Claimant alleges as disabling impairments: osteomyelitis and hepatitis as well as degenerative disc disease, calluses, and nerve problems.

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 this case, the claimant is not engaged in substantial gainful activity and has not worked since November 2004.

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).

The objective medical evidence in the record indicates that a [REDACTED] Medical Examination Report indicates that claimant was 6’ 1-1/2” tall and weighed 196 pounds. His blood pressure was 138/89. His pulse was 69 per minute and regular. He walked with a cane in his right hand. He had generalized weakness in both lower extremities, most pronounced on the right than the left. There was no muscle atrophy or weakness in any particular muscle group. He was able to stand unassisted with a normal stance. There was no deformity over the thoracic or lumbar spine. He complained of tenderness in the upper lumbar spine between L1-L2. Spinal movements were totally restricted, possibly due to the disease and lack of activity. In the supine position, straight leg raising bilaterally was positive at 60 degrees. Neurological examination

showed reflexes were equally hypoactive on both sides. However, plantar responses were bilaterally normal. There was no sensory impairment in the lower extremities. There was no weakness in the right knee or right ankle and foot muscles. His bladder and bowel functions were normal. He had normal function with no neurological deficit involving his upper extremities. He is right-hand dominant. Based on the medical history and clinical examination, the doctor opined that claimant had suffered from an attack of osteomyelitis involving his upper lumbar spine at the level of L1 and L2 in [REDACTED], followed by a recurrence of the infection in [REDACTED]. It was most likely due to intravenous use of heroin many years ago, with infection lying dormant in the upper lumbar spine for many years before becoming active. The latter attack was in [REDACTED]. He is presently not on any antibiotics but takes medication for pain and high cholesterol. Clinically, he was able to ambulate using a cane in his right hand because of generalized weakness in his legs. However, he had no bladder or bowel dysfunction. He was able to move both legs actively. Neurologically, he appeared to be intact, other than weakness in his legs from lack of activity.

(Pages 1-2)

A Medical Examination Report in the file indicates that claimant was normal of all areas of examination except that he had some discomfort from pain in the area of the lumbar spine, midline, 8-10/10 in intensity. On [REDACTED] claimant was 6' 1" and weighed 180 pounds. His blood pressure was 120/76. The clinical impression was that claimant was stable and that he could never lift any weight and that he could stand or walk less than two hours in an eight-hour workday. He could use his upper extremities for simple grasping, pushing/pulling, reaching, and fine manipulating, but he could not use either foot or leg for operating foot and leg controls.

Claimant had no mental limitations. (Pages 8-9)

At Step 2, claimant's impairments do not equal or meet 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 the instant case, this Administrative Law Judge finds that claimant does have medical improvement and his medical improvement is related to the claimant's ability to perform substantial gainful activity.

Thus, this Administrative Law Judge finds that claimant's. 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 claimant can perform at least sedentary work even with his impairments. This Administrative Law Judge finds that claimant only has limited objective medical findings and his doctor has determined that his lack of activity is what continues to cause the weakness in his legs.

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 probably perform his past work as a janitor and with activity would be able to strengthen his legs.

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, based upon the claimant's vocational profile of closely approaching advanced age with a limited education, MA-P is denied using Vocational Rule 202.13 as a guide. Claimant can perform other work in the form of light work per 20 CFR 416.967(b). This Administrative Law Judge finds that claimant does have medical improvement in this case and the department has established by the necessary, competent, material and substantial evidence on the record that it was acting in compliance with department policy when it proposed to cancel claimant's Medical Assistance and State Disability Assistance benefits based upon medical improvement.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

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 on the record that it was acting in compliance with department policy when it denied claimant's continued disability and application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence. Claimant does have medical improvement based upon the objective medical findings in the file.

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: September 14, 2009

Date Mailed: September 14, 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:

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