

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.: 2009-24805
Issue No.: 2009/4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
September 3, 2009
Wayne County DHS (17)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a hearing was conducted from Detroit, Michigan on September 3, 2009. The Claimant appeared and testified. The Claimant was represented by [REDACTED] [REDACTED] of [REDACTED] office. [REDACTED] [REDACTED] appeared on behalf of the Department. At the Claimant's request, the record was extended to allow for the submission of additional medical records.

The additional records were received, reviewed, and entered in to the record as Exhibits 7 and 8. This matter is now before the undersigned for a final determination.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes continued entitlement to Medical Assistance ("MA-P") and the State Disability Assistance ("SDA") benefits?

FINDINGS OF FACT

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

1. The Claimant submitted an application for public assistance seeking MA-P and SDA benefits on April 30, 2008.
2. On June 2, 2008, the Medical Review Team (“MRT”) found the Claimant disabled with a scheduled review date for April 2009. (Exhibit 7)
3. In April 2009, the Claimant completed a review application.
4. On April 17, 2009, the MRT found the Claimant not disabled. (Exhibit 1, p. 2)
5. The Department sent the Claimant an Eligibility Notice informing him he was found not disabled.
6. On April 24, 2009, the Department received the Claimant’s timely written request for hearing.
7. On June 13, 2009, the State Hearing Review Team (“SHRT”) found the Claimant not disabled based on insufficient evidence. (Exhibit 2)
8. The Claimant has alleged physical disabling impairment(s) due to cystic hydroma.
9. The Claimant has not alleged any mental disabling impairment(s).
10. The Claimant’s impairment(s) will last or has lasted for a period of 12 months or longer.
11. At the time of hearing, the Claimant was 41 years old with a [REDACTED] birth date; was 5’ 6” in height; and weighed 132 pounds.
12. The Claimant has a GED with a work history as a general laborer.

CONCLUSIONS OF LAW

The Medical Assistance (“MA”) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services (“DHS”), formally known as the Family Independence Agency, 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”).

Disability is defined as 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(a) The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual’s subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.929(a)

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant’s pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and

(4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

Once an individual has been found disabled for purposes of MA benefits, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in accordance with the medical improvement review standard. 20 CFR 416.993(a); 20 CFR 416.994 In evaluating a claim for ongoing MA benefits, federal regulation require a sequential evaluation process be utilized. 20 CFR 416.994(b)(5) The review may cease and benefits continued if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding an individual's disability has ended, the department will develop, along with the Claimant's cooperation, a complete medical history covering at least the 12 months preceding the date the individual signed a request seeking continuing disability benefits. 20 CFR 416.993(b) The department may order a consultative examination to determine whether or not the disability continues. 20 CFR 416.993(c)

The first step in the analysis in determining whether an individual's disability has ended requires the trier of fact to consider the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20 CFR 416.994(b)(5)(i) If a Listing is met, an individual's disability is found to continue with no further analysis required.

If the impairment(s) does not meet or equal a Listing, then Step 2 requires a determination of whether there has been medical improvement as defined in 20 CFR

416.994(b)(1); 20 CFR 416.994(b)(5)(ii) Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most favorable medical decision that the individual was disabled or continues to be disabled. 20 CFR 416.994(b)(1)(i) If no medical improvement found, and no exception applies (see listed exceptions below), then an individual's disability is found to continue. Conversely, if medical improvement is found, Step 3 calls for a determination of whether there has been an increase in the residual functional capacity ("RFC") based on the impairment(s) that were present at the time of the most favorable medical determination. 20 CFR 416.994(b)(5)(iii)

If medical improvement is not related to the ability to work, Step 4 evaluates whether any listed exception applies. 20 CFR 416.994(b)(5)(iv) If no exception is applicable, disability is found to continue. *Id.* If the medical improvement *is* related to an individual's ability to do work, then a determination of whether an individual's impairment(s) are severe is made. 20 CFR 416.994(b)(5)(iii), (v) If severe, an assessment of an individual's residual functional capacity to perform past work is made. 20 CFR 416.994(b)(5)(vi) If an individual can perform past relevant work, disability does not continue. *Id.* Similarly, when evidence establishes that the impairment(s) do (does) not significantly limit an individual's physical or mental abilities to do basic work activities, continuing disability will not be found. 20 CFR 416.994(b)(5)(v) Finally, if an individual is unable to perform past relevant work, vocational factors such as the individual's age, education, and past work experience are considered in determining whether despite the limitations an individual is able to perform other work. 20 CFR 416.994(b)(5)(vii) Disability ends if an individual is able to perform other work. *Id.*

The first group of exceptions (as mentioned above) to medical improvement (i.e., when disability can be found to have ended even though medical improvement has not occurred) found in 20 CFR 416.994(b)(3) are as follows:

- (i) Substantial evidence shows that the individual is the beneficiary of advances in medial or vocational therapy or technology (related to the ability to work);
- (ii) Substantial evidence shows that the individual has undergone vocational therapy related to the ability to work;
- (iii) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques the impairment(s) is not as disabling as previously determined 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 [20 CFR 416.994(b)(4)] to medical improvement are as follows:

- (i) A prior determination was fraudulently obtained;
- (ii) The individual failed to cooperated;
- (iii) The individual cannot be located;
- (iv) The prescribed treatment that was expected to restore the individual's ability to engage in substantial gainful activity was not followed.

If an exception from the second group listed above is applicable, a determination that the individual's disability has ended is made. 20 CFR 416.994(b)(5)(iv) The second group of exceptions to medical improvement may be considered at any point in the process. *Id.*

As discussed above, the first step in the sequential evaluation process to determine whether the Claimant's disability continues looks at the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1.

On [REDACTED], an MRI of the Claimant's neck mass was performed which revealed a large heterogeneous soft tissue mass lesion in the neck.

On [REDACTED], the Claimant attended a consultative examination. The Claimant's history of left parapharyngeal space mass was noted. In [REDACTED], the Claimant underwent a

left neck exploration, however, due to the invasive nature of the mass which was encasing the carotid artery, the lesion was unresectable thus the Claimant underwent embolization of the lesion. Due to the Claimant's continued shortness of breath, a tracheostomy was recommended.

On [REDACTED], the Claimant underwent surgery at the cancer institute to remove the neck mass which required a tracheostomy. The procedures performed were a local tracheostomy; suspension microlaryngoscopy; and laser excision of supraglottic web. No complications were noted.

On [REDACTED], the Claimant attended a follow-up appointment where breathing was noted as improved.

On [REDACTED], the physical examination revealed left vocal cord paralysis with right vocal cord hypomobility secondary to a scar band. Surgery was scheduled.

On [REDACTED], a similar surgery was performed without complication.

The [REDACTED] follow-up examination found the left vocal cord still paralyzed with continued erythema in the epiglottis and along the posterior cricoid region. No masses were seen.

On [REDACTED] the Claimant attended a follow-up appointment at the cancer institute. His breathing had improved and pain was controlled.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The Claimant's [REDACTED] surgery to excise the mass resulting in a tracheostomy was noted. The current diagnosis was listed in part as left vocal cord paralysis. The Claimant's condition was stable and he was found able to occasionally lift/carry 10 pounds; stand and/or walk less than 2 hours during an 8-hour workday; sit less than 6 hours during this same period; and able to perform repetitive actions with his extremities.

On [REDACTED], an Assessment of Pain was completed on behalf of the Claimant. The pain was found to distract the Claimant from adequately performing daily activities and work noting that physical activities greatly increase his pain. Drug side effects were expected to be severe and would limit effectiveness due to distraction, inattention, drowsiness, etc.

The [REDACTED] follow-up appointment documented vocal cord paralysis and interarytenoid adhesion, tethering the right vocal fold. Surgery was scheduled.

On [REDACTED], a suspension microlaryngoscopy and excision of interarytenoid scar was performed without complication.

On [REDACTED], the Claimant attended a follow-up appointment at the cancer institute. The Claimant's breathing was improved with mild swelling/tenderness noted. The pathology report was negative for malignancy.

On [REDACTED], the Claimant attended a follow-up appointment. A videostroboscopy was performed which revealed an increase in airway size. The Claimant was found to have left sided vocal cord paralysis with improved airway and movement of the right vocal cord.

On [REDACTED], the Claimant attended a follow-up appointment which documented some improvement however continued scar tissue was noted. Surgery was scheduled in 4 weeks.

On [REDACTED], a microlaryngoscopy with excision of posterior glottic scar tissue was performed on the Claimant which included placement of a tracheostomy tube. The surgery was without complication.

The [REDACTED] pathologic diagnoses of the glottic web excision were benign.

On [REDACTED], the Claimant attended a follow-up appointment. The left vocal cord was "again paralyzed" and a small band of scar tissue remained on the superior aspect of the arytenoids bilaterally.

Comparatively, prior medical documentation established that the Claimant had a left neck mass bilateral vocal cord scarring and respiratory compromise. The Claimant has had several surgeries which required a tracheostomy. The treating physician opined that the Claimant's condition was deteriorating. An MRI revealed a large heterogeneous mass with cystic and solid components suggestive of hemangiolympangioma. Older records (2001) were submitted which indicate the Claimant's condition was laryngeal cancer. The Claimant was referred to the leading cancer institute.

As detailed above, the Claimant's impairment(s) continue however a listed impairment is not met. If the impairment(s) does not meet or equal a Listing, then Step 2 requires a determination of whether there has been medical improvement as defined in 20 CFR 416.994(b)(1); 20 CFR 416.994(b)(5)(ii) Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most favorable medical decision that the individual was disabled or continues to be disabled. 20 CFR 416.994(b)(1)(i) In this case, the objective medical documentation does not reflect a decrease in the medical severity, nor is an exception applicable, therefore the Claimant's disability is found to have continued with no further analysis required.

The State Disability Assistance ("SDA") program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Department policies are found in PAM, PEM, and PRM. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based

on disability or blindness, or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, the Claimant is found disabled for purposes of continued Medical Assistance (“MA-P”) entitlement, therefore the Claimant’s is found disabled for purposes of continued SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant disabled for purposes of continued Medical Assistance program and the State Disability Assistance program.

It is ORDERED:

1. The Department’s determination is REVERSED.
2. The Department shall initiate review of the redetermination application to determine if all other non-medical criteria are met and inform the Claimant and his representative of the determination.
3. The Department shall supplement for any lost benefits (if any) the Claimant was entitled to receive if otherwise eligible and qualified in accordance with department policy.
4. The Department shall review the Claimant’s continued eligibility in December 2010 in accordance with department policy.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 11/25/09

Date Mailed: 11/25/09

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 the Circuit 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.

CMM/jlg

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