

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.: 2009-33117
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
December 14, 2009
Wayne County DHS (18)

ADMINISTRATIVE LAW JUDGE: Linda Steadley Schwarb

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 hearing was held on December 14, 2009. Claimant appeared and testified. Claimant was represented by [REDACTED]. Following the hearing, the record was kept open for the receipt of additional medical evidence. Additional documents were received and reviewed.

ISSUE

Did the Department of Human Services (DHS or department) properly determine that claimant is no longer "disabled" for purposes of the Medical Assistance (MA-P) and State Disability Assistance (SDA) programs?

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 has been an ongoing recipient of MA-P and SDA benefits based upon a December 18, 2008, Medical Review Team (MRT) approval of a July 21, 2008, application for benefits.
- 2) On July 16, 2009, the department notified claimant of its intent to terminate claimant's ongoing benefits based upon the belief that claimant no longer met the requisite disability criteria.
- 3) On July 20, 2009, claimant filed a timely hearing request to protest the department's determination.
- 4) Thereafter, the department deleted its proposed negative action pending the outcome of the instant hearing.
- 5) Claimant, age 52, is a high-school graduate.
- 6) Claimant last worked in June of 2008 as school food service employee. Claimant has also performed relevant work as a newspaper sales person, bartender, and restaurant manager. Claimant's relevant work history consists exclusively of unskilled work activities.
- 7) Claimant has a history of a [REDACTED] right hip replacement secondary to degenerative arthritis.
- 8) In recent years, claimant has suffered with chronic bilateral hip pain secondary to degenerative changes.
- 9) On [REDACTED], claimant underwent left hip arthroplasty.
- 10) Claimant currently suffers from chronic bilateral hip pain secondary to degenerative changes with history of right hip arthroplasty in [REDACTED] and left hip arthroplasty on [REDACTED]. Claimant's right hip is currently

characterized with severe osteolysis and wear requiring future revision. Claimant also suffers from depression and gastroesophageal reflux disease.

- 11) When comparing current medical documentation with documentation from the most recent MRT approval on December 18, 2008, it is found that medical improvement of claimant's condition has not occurred as there has been no decrease in the severity of claimant's impairments as shown by changes in symptoms, signs, and/or laboratory findings.

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).

Federal regulations require that the department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"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

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, claimant is not currently working. Accordingly, claimant may not be disqualified for MA at this step in the sequential evaluation process.

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). This Administrative Law Judge finds that claimant's impairments are not "listed impairments" nor equal to listed impairments. Accordingly, the sequential evaluation process must continue.

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, claimant was most recently approved for MA-P on December 18, 2008, by the MRT. That approval was based in large part on a consulting orthopedic evaluation performed on [REDACTED], and [REDACTED]. The consultant opined on [REDACTED], after reviewing recent x-rays of claimant's right hip, that claimant likely had a "loose femoral stem and also some separation of the acetabular cup" with regard to the right hip. The consultant went on to state as follows: "Under the circumstances, I think she will probably require a revision arthroplast of the right hip." On [REDACTED], claimant's treating orthopedist opined that claimant was limited to occasionally lifting up to ten pounds but limited to standing and walking less than two hours in an eight-hour work day and using a cane as needed. The physician indicated that claimant was incapable of operating foot or leg controls with the bilateral lower extremities. On [REDACTED], claimant's treating internist opined that, as a result of bilateral hip pain, claimant was limited to occasionally lifting less than ten pounds as well a limited to standing and walking less than two hours in an eight-hour work day and sitting less than six hours in an eight-hour work day. The records indicate that, on [REDACTED], claimant underwent a left hip arthroplasty. Following recovery and physical therapy, claimant was said to be awaiting a right hip arthroplasty revision secondary to severe osteolysis and wear. On [REDACTED], claimant's treating orthopedist indicated that, following some recovery from her left hip surgery, the physician planned to proceed with revision arthroplasty on the right hip. After careful consideration of the entire hearing record, the undersigned Administrative

Law Judge, when comparing past medical documentation with current medical documentation, finds that there has been no medical improvement.

In the fifth step of the sequential evaluation, the trier of fact must consider whether any of the exceptions in 20 CFR 416.994(b)(3) and (b)(4) apply. If none of them apply, claimant's disability must be found to continue. 20 CFR 416.994(b)(5)(v).

The first group of exceptions 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:

- (1) Substantial evidence shows that the claimant is the beneficiary of advances in medical or vocational therapy or technology (related to claimant's ability to work).
- (2) Substantial evidence shows that the claimant has undergone vocational therapy (related to claimant's ability to work).
- (3) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques, claimant's impairment(s) is not as disabling as it was considered to be at the time of the most recent favorable medical decision.
- (4) Substantial evidence demonstrates that any prior disability decision was in error.

In examining the record, this Administrative Law Judge finds that there is nothing to suggest that any of the exceptions listed above applies to claimant's case.

The second group of exceptions is medical improvement, found at 20 CFR 416.994(b)(4), are as follows:

- (1) A prior determination was fraudulently obtained.
- (2) Claimant did not cooperate.
- (3) Claimant cannot be located.

- (4) Claimant failed to follow prescribed treatment which would be expected to restore claimant's ability to engage in substantial gainful activity.

After careful review of the record, the undersigned finds that none of the above-mentioned exceptions applies to claimant's case. Accordingly, per 20 CFR 416.994, this Administrative Law Judge concludes that claimant's disability for purposes of MA must continue.

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).

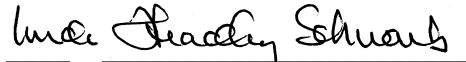
A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM Item 261. Inasmuch as claimant has been found to continue to be "disabled" for purposes of MA, her disability must be found to continue for purposes of SDA eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant continues to be "disabled" for purposes of the Medical Assistance and State Disability Assistance programs.

Accordingly, the department's determination in this matter is hereby reversed. The department is ordered to maintain claimant's eligibility for the Medical Assistance and State

Disability Assistance programs if claimant is otherwise eligible for program benefits. The department shall review claimant's continued eligibility for program benefits in November of 2010.



Linda Steadley Schwarb
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 29, 2010

Date Mailed: May 3, 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.

LSS/pf

cc:

