

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: 2009-5254

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 18, 2009

Wayne 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, March 18, 2009. The claimant personally appeared and testified.

ISSUE

Did the department properly determine that the claimant has not established continued eligibility for disability under 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) On September 5, 2006, the claimant applied for MA-P and SDA with a retroactive MA-P application to June 2006.

(2) On December 1, 2006, the Medical Review Team (MRT) approved the claimant until June 2007 for MA-P and retroactive MA-P stating that the claimant was not capable of performing other work and for SDA that the claimant was automatically eligible for SDA on the basis of disability as the result of eligibility for MA as certified in Section 2.

(3) On July 27, 2007, the MRT approved the claimant for MA-P based on PD Code 5 where the claimant qualified for continued eligibility based on medical review and for SDA based on the claimant being automatically eligible for SDA as the result of eligibility for Medicaid as per the findings in Section 2 until June 8, 2008.

(4) On October 22, 2008, the MRT denied the claimant for MA-P based on the claimant was no longer qualified for continued eligibility for MA-P disability based on medical review and for SDA that the claimant's physical or mental impairment does not prevent employment for 90 days or more.

(5) On October 24, 2008, the department caseworker sent the claimant a notice that his application was denied.

(6) On October 27, 2008, the department received a hearing request from the claimant, contesting the department's negative action.

(7) On December 8, 2008, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA-P, retroactive MA-P, and SDA eligibility for the claimant. The SHRT report reads in part:

The claimant is alleging disability due to COPD, diabetes, and hypertension. The claimant is 49 years old and has a high school education with a history of semi-skilled work. The claimant did not meet applicable Social Security Listing 9.08, 3.02, 3.03, 4.02, and 4.04. The claimant is capable of performing other work that is light under Vocational Rule 202.20.

(8) The claimant is a 49 year-old man whose date of birth is [REDACTED]. The claimant is 6' 1" tall and weighs 242 pounds. The claimant has gained 15 pounds in the past year because of not doing anything. The claimant has a high school diploma and one year of college in practical nursing. The claimant testified that he can read and write and do basic math. The claimant was last employed as a laborer in September 2006. The claimant has also been employed as a licensed practical nurse and certified nursing assistant.

(9) The claimant's alleged impairments are COPD, type 2 diabetes, high blood pressure, low back strain, chest pain, and heart stent placement in [REDACTED].

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 substantially gainfully employed and has not worked since September 2006. Therefore, the claimant is not 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, the claimant has had medical improvement by a decrease in medical severity in [REDACTED]; the claimant was given an internal medical evaluation at [REDACTED] [REDACTED]. The independent medical examiner's diagnosis and impressions are the claimant's hypertension was well controlled with the present regimen. Clinically, there was no evidence of cardiac failure. Cardiac size could not be determined clinically due to obesity. Fundi were normal as far as could be visualized through undilated pupils. The claimant has a history of chest pain, which is not suggestive of angina pectoris. The claimant is status post angioplasty and insertion of a stent for coronary arterial disease. The claimant has an alleged history of COPD that is well controlled with present regimen. Clinically, there was no evidence of emphysema or COR pulmonale. The claimant was not breathless on normal physical exertion. The claimant

does an old gunshot injury to the right leg and osteoarthritis of the lumbar spine. The claimant has functional limitations with a history of gout that is well controlled. The claimant also has a history of carpal tunnel syndrome, but this could not be corroborated from his present examination. The claimant's Tinel's sign was negative. The claimant had good grip in both hands. The claimant's diabetes mellitus per his history is not well controlled. Exact status could not be determined in the absence of blood sugars. Clinically, there was no evidence of diabetic neuropathy, retinopathy, or nephropathy. The claimant had exogenous obesity where there was no limitation of mobility or activity from it. (Department Exhibit 8-11)

On [REDACTED], the claimant's treating physician submitted a Medical Examination Report, DHS-49, for the claimant. The claimant was last examined on [REDACTED]. The claimant had a history of impairment and chief complaint and current diagnosis of heart attack in [REDACTED] with a stent placement and chronic heart failure. The claimant has insulin dependent diabetes, leg and back pain, dizziness, COPD, shortness of breath on slight exertion, coronary artery disease, and carpal tunnel syndrome of the bilateral hands. Claimant had a normal physical examination except the claimant's treating physician noted gait disturbance. The claimant also had shortness of breath on exertion and bronchitis. The claimant had a heart stent placement and chronic heart failure. The claimant also had sciatica leg pain musculoskeletally. Neurologically, the claimant had carpal tunnel syndrome bilaterally in the hands. (Department Exhibit 18)

The claimant's treating physician felt that the claimant was deteriorating with limitations that were expected to last more than 90 days. The claimant could not lift any weight and could only stand and/or walk less than two hours of an eight hour workday. The claimant needed a cane as an assistive device to walk that was medically needed for ambulation. The claimant could use neither hands nor arms or feet/legs for repetitive action. The medical findings that

support the above physical limitations were x-rays, MRIs of hands and back, and CT scans pending. The claimant had no mental limitations. In addition, he could not meet his needs in the home, but needed a household chore provider. (Department Exhibit 19)

On [REDACTED], the claimant was given a left heart cardiac catheterization retrograde procedure. The indication for the procedure was that the claimant had a history of hypertension, diabetes, with a positive stress test. The physician's impression was normal LV function and 90 percent lesion in the ramus vessel. The recommendation was to continue medical management and aggressive risk factor modification. The claimant was to continue aspirin beta blocker and ACE inhibitors. The right groin hemostasis was obtained with closing device Mynx. The claimant remained stable and tolerated the procedure well and was transferred to the floor in stable condition. (Department Exhibit 12-13)

On [REDACTED], the claimant was given an independent physical examination at [REDACTED]. The independent medical examiner's diagnosis and impression was that the diabetes mellitus was not very well controlled, but there was no evidence of diabetic neuropathy, retinopathy and nephropathy. Claimant has impaired touch, pinprick, and vibration sensation over the right leg which could be due to old gunshot injury to the right leg. The claimant had hypertension which is borderline at this time with the current regimen. Clinically there is no evidence of cardiac failure. The claimant has a history of angioplasty and insertion of a stent for coronary artery disease. The claimant has a history of chest pain, which could be angina pectoris. The claimant has COPD which is well controlled with the present regimen. There was no evidence of emphysema or COR pulmonale. The claimant was not breathless on normal exertion. There were no significant abnormal physical findings, except straight leg raising test was 85 degrees on the right side due to the fracture of the right leg from gunshot injury. There were no

functional limitations orthopedically noted during the exam. The claimant has a history of bipolar disorder, but memory was fairly good and he had fair grooming and hygiene. The claimant had exogenous obesity with no limitation of mobility or activity from it. (Department Exhibit 32-36)

The claimant was given an independent medical evaluation by [REDACTED] on [REDACTED] where the independent medical examiner found that the claimant had coronary heart disease status post heart catheterization and stent placement in [REDACTED] at [REDACTED], diabetes, hypertension, high cholesterol, GERD, history of polysubstance drug abuse, including alcohol and cocaine, chronic back pain, chronic right leg pain with history of gunshot wound, and right side carpal tunnel syndrome. The claimant had fatigue, dry mouth, blurred vision, frequency, back pain, and weakness in the right hand. The claimant had periodic chest pain off and on with shortness of breath and dyspnea on exertion. Pulmonarily, the claimant had coughing, wheezing, and shortness of breath. The claimant had heartburn, but denied nausea, vomiting or rectal bleeding. (Department Exhibit 62-69)

Neurologically, the claimant was alert, awake, and oriented. He had a normal physical examination. The claimant's visual acuity without glasses was 20/100 in the right eye and 20/25 in the left eye with near vision of 13/70 in the right eye and 13/20 in the left eye. The claimant's heart had regular rate and rhythm with a normal S1 and S2, of positive S4. The claimant had no edema, but a surgical scar on his right leg at the site of the skin grafting. The claimant was able to take steps in the office without his cane which he uses to reduce pain. The claimant was able to walk on heels and toes, but said it gives him right leg pain. The claimant's right hand grip was 22 kg and left was 50 kg. Tinel's sign was positive on the right side. The claimant had mild degenerative arthritis of the lower lumbar spine. The claimant's lumbar spine was positive for

paravertebral muscle spasm. The claimant did not have any physical limitations. (Department Exhibit 62-69)

At Step 3, the objective medical evidence on the record indicates that the claimant has had medical improvement. The claimant had a heart episode that required stenting in [REDACTED]. In addition, the claimant had a left heart catheterization on [REDACTED]. However, the claimant's independent medical examination on [REDACTED] showed that the claimant had had medical improvement with his high blood pressure, CAD, COPD, and exogenous obesity. The claimant did have arthritis of the lumbar spine where he had functional limitations from it with a history of gout that is well controlled. Claimant did have an old gunshot injury to the right leg and a history of carpal tunnel syndrome. His Tinel's sign was negative and he had good grip in both hands. The claimant's diabetes mellitus is not well controlled per history, but there no evidence of diabetic neuropathy, retinopathy, or nephropathy. The claimant's treating physician on [REDACTED] completed a Medical Examination Report that gave the claimant less than sedentary work restrictions, but the independent medical consultant's examinations on [REDACTED] goes against the great weight of the objective medical evidence in the packet and will not be given controlling weight. Therefore, the claimant is disqualified from receiving disability at Step 3.

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 there has been an increase in claimant's residual functional capacity based on the impairment that was present at the time of

the most favorable medical determination. The claimant's medical improvement is related to his ability to perform work. (See analysis in Steps 1, 2, and 3 above.)

At Step 4, this Administrative Law Judge finds that the claimant's medical improvement is related to his ability to do work. The claimant had stenting and angioplasty in [REDACTED], but in [REDACTED] his history of chest pain was not suggestive of angina pectoris. The claimant's COPD, hypertension, and exogenous obesity were well controlled with his current regimen. The claimant did have an old gunshot injury to the right leg. He also had osteoarthritis of his lumbar spine with functional limitations. The claimant's history of gout was well controlled. His Tinel's sign was negative and he had good grip strength in both hands. His diabetes mellitus was not well controlled, but there was no evidence of diabetic neuropathy, retinopathy, or nephropathy. Even though the claimant was overweight he had no limitations of mobility from it. The claimant's physician on [REDACTED] stated that he had limitations but the limitations were not supported by the other objective medical evidence and will not be given any weight. If there is a finding of medical improvement related to the claimant's ability to perform work, the trier of fact is to move to Step 6 in the sequential evaluation process.

Thus, this Administrative Law Judge finds that claimant's medical improvement is related to claimant's 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 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 not have a driver's license and does not drive because of his doctor's orders as a result of his medication and he has no car. The claimant does not cook or grocery shop. The claimant does not clean his own home, do any outside work, or have any hobbies. The claimant felt his condition has worsened in the past because he's had an increase in fatigue and the side effects of his medication. The claimant testified that he did not have any mental impairment.

The claimant wakes up between 10:00 to 11:00 a.m. He takes his medications and insulin. He eats. He looks for somewhere to sleep before it gets dark. He is in the shelter at 7:00 p.m.

The claimant felt he could walk a half a block. The longest he felt he could stand was 15 minutes. The claimant does not have a problem sitting with his legs up. The heaviest weight the claimant felt he could carry was 10 pounds. His level of pain on a scale of 1 to 10 without medication was a 10 that decreases to a 0 when he's sleeping.

The claimant stopped smoking in [REDACTED] where before he smoked a pack of cigarettes a day. The claimant stopped drinking in [REDACTED] where before he was a social drinker. The claimant stopped taking marijuana and cocaine in [REDACTED]

In this case, the Administrative Law Judge finds that the claimant retains the capacity to perform at least light work. The claimant's past work was as a laborer, licensed practical nurse, and certified nursing assistant. The claimant performed as a laborer at the light level so the claimant should be able to perform his past work as a laborer at the light level. The claimant may not be able to lift the weight required for an LPN and a CNA, which were some of his past jobs. (See analysis in Steps 1, 2, 3, 4, and 6) 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 light work. (See prior analysis in Steps 1, 2, 3, 4, 6, and 7.) Therefore, the claimant is disqualified from receiving continued Medical Assistance benefits because he does have medical improvement.

The department's Program Eligibility Manual provides the following policy statements and instructions for caseworkers regarding the SDA program.

DISABILITY – SDA

DEPARTMENT POLICY

SDA

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older.

Note: There is no disability requirement for AMP. PEM 261, p. 1.

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.

Other Benefits or Services

Persons receiving one of the following benefits or services meet the SDA disability criteria:

- . Retirement, Survivors and Disability Insurance (RSDI), due to disability or blindness.
- . Supplemental Security Income (SSI), due to disability or blindness.
- . Medicaid (including spend-down) as blind or disabled if the disability/blindness is based on:
 - .. a DE/MRT/SRT determination, or
 - .. a hearing decision, or
 - .. having SSI based on blindness or disability recently terminated (within the past 12 months) for financial reasons.

Medicaid received by former SSI recipients based on policies in PEM 150 under "**SSI TERMINATIONS,**" INCLUDING "**MA While Appealing Disability Termination,**" does not qualify a person as disabled for SDA. Such persons must be certified as disabled or meet one of the other SDA qualifying criteria. See "**Medical Certification of Disability**" below.

- . Michigan Rehabilitation Services (MRS). A person is receiving services if he has been determined eligible for MRS and has an active MRS case. Do not refer or advise applicants to apply for MRS for the purpose of qualifying for SDA.

- . Special education services from the local intermediate school district. To qualify, the person may be:
 - .. attending school under a special education plan approved by the local Individual Educational Planning Committee (IEPC); **or**
 - .. not attending under an IEPC approved plan but has been certified as a special education student **and** is attending a school program leading to a high school diploma or its equivalent, **and** is under age 26. The program does not have to be designated as “special education” as long as the person has been certified as a special education student. Eligibility on this basis continues until the person completes the high school program or reaches age 26, whichever is earlier.
- . Refugee or asylee who lost eligibility for Social Security Income (SSI) due to exceeding the maximum time limit PEM, Item 261, pp. 1-2.

Because the claimant does not meet the definition of disabled under the MA program and because the evidence in the record does not establish that the claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for continued SDA.

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 MA-P and SDA to determine the claimant was no longer eligible for continued disability benefits. The claimant should be able to perform a wide range of light work. 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: May 1, 2009

Date Mailed: May 1, 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:

