

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: 2009-7475

Issue No: 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 2, 2009

Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 April 2, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services properly determine that Claimant no longer met the disability standard for 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) On June 12, 2008, Claimant applied for State Disability Assistance (SDA).
- (2) On July 7, 2008, the Department of Human Services Medical Review Team determined that Claimant was disabled in accordance with the standards for State Disability Assistance (SDA).

(3) On November 11, 2008, the Department Medical Review Team reviewed Claimant's case and determined he was no longer disabled for purposes of State Disability Assistance (SDA).

(4) On November 14, 2008, Claimant was sent notice of the Department's determination.

(5) On November 21, 2008, Claimant submitted a request for hearing.

(6) On January 12, 2009, the State Hearing Review Team determined that Claimant was no longer disabled in accordance with the standards for State Disability Assistance (SDA).

(7) At this hearing Claimant presented additional medical evidence which was sent to the State Hearing Review Team for review.

(8) On May 29, 2009, the State Hearing Review Team again determined that Claimant was no longer disabled in accordance with the standards for State Disability Assistance (SDA).

(9) Claimant is a 46 year old male. Claimant is 68 inches tall and weighs approximately 175 pounds. Claimant's formal education consists of 12 years of school.

(10) Claimant has past relevant work as a forklift operator and warehouse supervisor.

(11) Claimant asserts continuing disability based on leg, hip and back damage and the resulting pain.

(12) Claimant last worked in August 2006, as a supervisor. Claimant reports he left that employment because the job ended.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manuals (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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manuals (PRM).

Once an individual has been determined to be “disabled” for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. The purpose of the review is to determine if your medical condition still meets the Social Security Administration disability standard. There are two main factors used in deciding whether your disability continues. One is your current medical condition. The other is whether you can engage in any substantial gainful activity. 20 CFR 416.994

In evaluating whether your disability continues any current work activities, any medical improvement in your previous impairments, and the severity of your current impairment(s) are assessed. Review may cease and benefits may be continued at any point if there is substantial evidence to find that you are unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

The starting point of the review is to determine if you are currently engaged in substantial gainful activity. Substantial gainful activity is defined as work activity: that is both substantial and gainful; and involves doing significant physical or mental activities. Gainful work activity is work activity that you do for pay or profit (20 CFR 416.972). If you are engaged in substantial

gainful activity, that fact establishes that you are capable of working and you are no longer disabled.

Claimant testified that he has not been employed since August 2006. Claimant is not engaged in substantial gainful activity.

If you are not engaged in substantial gainful activity an evaluation is done using the evidence in the record. The sequential seven step evaluation is contained in 20 CFR 416.994(b)(5).

- (5) *Evaluation steps.* 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 decisions 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. The steps are as follows. (See paragraph (b)(8) of this section if you work during your current period of eligibility based on disability or during certain other periods.)
- (i) *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.
- (ii) *Step 2.* If you do not, has there been 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.)
- (iii) *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 4 in paragraph (b)(5)(iv) of this section. If medical improvement *is* related to your ability to do work, see step 5 in paragraph (b)(5)(v) of this section.

- (iv) *Step 4.* If we found at 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 one 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.
- (v) *Step 5.* If medical improvement is shown to be related to your ability to do work or if one of the first group of exceptions to medical improvement applies, we will determine whether all your current impairments in combination are severe (see [§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 of your ability to do basic work activities, see step 6 in paragraph (b)(5)(vi) 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 to be disabled.
- (vi) *Step 6.* If your impairment(s) is severe, we will assess your current ability to do substantial gainful activity in accordance with [§416.960](#). That is, we will assess your residual functional capacity based on all your current impairments and consider whether you can still do work you have done in the past. If you can do such work, disability will be found to have ended.
- (vii) *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.

At step 1, it is determined whether you have 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. If your impairment or combination of impairments meet or equal the severity of an impairment listing, your disability will be found to continue.

In order to make this determination the evidence showing your current medical condition must be evaluated. Claimant asserts continuing disability based upon leg, hip and back damage and the resulting pain. Claimant was in an accident in September 2006. In March 2008 Claimant underwent a decompressive laminectomy and fusion of L5-S1 for spondylolisthesis and sciatica. Evidence in the record of Claimant's current medical condition includes:

A Medical Examination Report (form DHS-49) dated September 9, 2008. (Pages 50 & 51) The report indicates that Claimant is stable with some lifting restrictions.

On September 19, 2008 an MRI of Claimant's spine was done. [REDACTED] reviewed the MRI. (Pages 44 & 45) The Doctor described: L2-L3 No thecal sac stenosis or foraminal stenosis; L3-L4 No thecal sac stenosis or foraminal stenosis; L4-L5 a stable very small posterior midline disc protrusion with minimal ventral thecal sac effacement, no significant nerve root impingement, and no thecal sac stenosis or foraminal stenosis; L5-S1 operative changes from fusion and decompression with some susceptibility from hardware partially assuming surrounding structure, adequate posterior decompression, no significant thecal sac stenosis, and mild elongation of the neural foramina without impingement.

On October 23, 2008 Claimant was examined by [REDACTED] (Pages A23 & A24) The Doctor reviewed an MRI and found the fusion was intact with no signs of thecal sac impingement, foraminal stenosis or nerve root impingement. The Doctor noted that Claimant appeared in no acute distress. His findings were decreased sensation in the L2 through S1 dermatomes on the left, 4 out of 5 muscle strength on the lower left, and 5 of 5 on the lower right. The Doctor opined that Claimant's pain complaints could be caused by a pseudoarthrosis.

On January 13, 2009 Claimant was examined by [REDACTED] (Pages [REDACTED]) The Doctor examined x-rays and determined that there was "lucency" around the S1 pedicle screws

bilaterally and there was probably not a solid fusion on the right. The Doctor's impression was that Claimant had psuedoarthrosis with possible loose screws. The plan was to operate and repair any insufficiencies.

On February 26, 2009 Claimant was given a pre-operative examination by [REDACTED] (Pages A16-A19) The Doctor found that: Claimant had 4 out of 5 muscle strength in the left lower extremities; straight leg raise test on the right elicited mild low back pain; straight leg raise test on the left elicited severe low back pain; Claimant was able to stand on toes and heels with assistance for balance; Claimant was able to ambulate with a left antalgic gait; left lower extremities had decreased sensation; and significant point tenderness at the L4-L5 area.

There is an April 21, 2009 page of vital signs, current medications and active problems. (Page A9) There is no specific information on the result of the second surgery.

The current medical evidence regarding Claimant's impairment was compared with the Social Security Administration impairment listing 11.04. That listing is:

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

or

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

or

- C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

Claimant's impairments do not meet or equal this listing because there is no nerve root compression, spinal arachnoiditis or spinal stenosis.

In this step we determine whether there has been medical improvement in your previous impairments. Medical improvement is defined in 20 CFR 416.994(b)(1)(i). 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 evaluation proceeds to Step 3. If there has been no decrease in medical severity and thus no medical improvement, the evaluation skips Step 3 and proceeds to Step 4.

The most recent favorable medical decision that the claimant was disabled was July 7, 2008. Claimant had undergone a decompressive laminectomy and fusion of L5-S1 for spondylolisthesis and sciatica in March 2008. MRI studies of Claimant's lumbar spine prior to the operation showed a diffuse disc bulge with central disc herniation at L4-L5 and a bulging disc and bilateral pars defects at L5-S1.

██████████ conducted a pro-operative examination on February 21, 2008. (Pages 100-102) The Doctor found Claimant ambulated well with a left antalgic gait and had muscle strength of 5 out of 5 on lower right and 4 out of 5 on lower left. Claimant had a negative straight leg raise on

the right and positive on the left. Claimant had normal sensation in the lower right extremity and was hyperacute to sharp sensation throughout the left lower extremity.

The operative report (Pages 97-99) indicates the surgery went well and was considered successful. The only post-operative medical information in the record on July 7, 2008 was an affidavit from the surgeon, [REDACTED] (Pages 70-74) and Dr. Ruoff (Pages 75-81).

On May 30, 2008 [REDACTED] signed an affidavit. [REDACTED] signed that Claimant would be restricted from bending, twisting, lifting, or turning for six months following surgery. Most of the affidavit related to the role of Claimant's 2006 accident in his medical problems. The Doctor provided no specific information on Claimant's actual condition.

On June 9, 2008 [REDACTED] signed an affidavit. The Doctor signed that he last saw Claimant "a few months ago." Most of the affidavit related to the role of Claimant's 2006 accident in his medical problems. The Doctor provided no specific information on Claimant's actual condition.

There is acceptable medical imaging of Claimant's spine that can be compared. Claimant's spine at L4-L5 changed from a diffuse disc bulge with central disc herniation to a stable very small posterior midline disc protrusion. The change at L5-S1 was from a bulging disc and bilateral pars defects to adequate posterior decompression, no significant thecal sac stenosis, and mild elongation of the neural foramina without impingement. This is a significant medical improvement. There has been medical improvement in Claimant's previous impairments. The evaluation proceeds to Step 3.

If there has been medical improvement as shown by a decrease in medical severity, this step of the evaluation is done to determine if the medical improvement is related to your ability to work. 20 CFR 416.994(b)(1) provides:

- (ii) *Medical improvement not related to ability to do work.* Medical improvement is not related to your ability to work if there has been a decrease in the severity of the impairment(s) as defined in paragraph (b)(1)(i) of this section, present at the time of the most recent favorable medical decision, but *no* increase in your functional capacity to do basic work activities as defined in paragraph (b)(1)(iv) of this section.
- (iii) *Medical improvement that is related to ability to do work.* Medical improvement is related to your ability to work if there has been a decrease in the severity, as defined in paragraph (b)(1)(i) of this section, of the impairment(s) present at the time of the most recent favorable medical decision *and* an increase in your functional capacity to do basic work activities as discussed in paragraph (b)(1)(iv) of this section.
- (iv) *Functional capacity to do basic work activities.* Under the law, disability is defined, in part, as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment(s). In determining whether you are disabled under the law, we must measure, therefore, how and to what extent your impairment(s) has affected your ability to do work. We do this by looking at how your functional capacity for doing basic work activities has been affected. Basic work activities means the abilities and aptitudes necessary to do most jobs. Included are exertional abilities such as walking, standing, pushing, pulling, reaching and carrying, and nonexertional abilities and aptitudes such as seeing, hearing, speaking, remembering, using judgment, dealing with changes and dealing with both supervisors and fellow workers.

At the time of the most recent favorable medical determination Claimant was completely restricted from bending, twisting, lifting, or turning for six months following surgery. He had no residual functional capacity based on the impairment(s) that was present at the time of the most recent favorable medical determination.

On September 9, 2008 (six months after surgery) a Medical Examination Report (form DHS-49) was completed based on a September 4, 2008 examination of Claimant. Claimant was determined to be stable and his only restrictions were to lift 20 pounds frequently and 25 pounds occasionally.

Other medical source evidence indicates that Claimant's fusion may not have been solid on the right side due to loose S1 screws. Both [REDACTED] and [REDACTED] diagnosed Claimant with psuedarthrosis from the loose screws.

On March 9, 2009 Claimant underwent surgery to repair the fusion. There is no medical documentation in the record regarding the effect of the second surgery. Claimant probably had a six month complete restriction from bending, twisting, lifting, or turning for six months following surgery again. At the time of this hearing there had not been an increase in claimant's residual functional capacity. Thus, claimant's medical improvement is not related to claimant's ability to do work.

If Step 2 determined that there was no medical improvement, or Step 3 determined your medical improvement was not related to your ability to work, this step of the sequential evaluation is done to determine whether any of the exceptions in 20 CFR 416.994(b)(3) and (b)(4) apply to you. If none of the exceptions applies to you, your disability will be found to continue.

The first group of exceptions to medical improvement are found in 20 CFR 416.994(b)(3). If any of this first group of exceptions applies to you, the evaluation will proceed to Step 5. The first group of exceptions is:

- (i) Substantial evidence shows that you are the beneficiary of advances in medical or vocational therapy or technology (related to your ability to work).
- (ii) Substantial evidence shows that you have undergone vocational therapy (related to your ability to work).
- (iii) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques your impairment(s) is not as disabling as it was considered to be 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 to medical improvement are found at 20 CFR 416.994(b)(4). If any of the second group of exceptions applies to you, your disability will be found to have ended. The second group of exceptions is:

- (i) A prior determination or decision was fraudulently obtained.
- (ii) You do not cooperate with us.
- (iii) We are unable to find you.
- (iv) You fail to follow prescribed treatment which would be expected to restore your ability to engage in substantial gainful activity.

None of the exceptions apply to Claimant and disability is found to continue.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services DID NOT properly determine that Claimant no longer met the disability standard for State Disability Assistance (SDA).

It is ORDERED that the actions of the Department of Human Services, in this matter, are REVERSED.

It is Further ORDERED that Claimant's disability status be re-evaluated as soon as possible.

/s/

Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 4, 2010

Date Mailed: August 12, 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.

GFH/alc

cc:

