

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2010 16641
Issue No: 2009-4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 21, 2010
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 April 21, 2010. The Claimant appeared and testified.

ISSUE

Whether the Department properly determined the claimant is not "disabled" for purposes of the Medical Assistance (MA) and State Disability Assistance (SDA) program?

FINDINGS OF FACT

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

1. On November 2008, the Claimant was approved MA-P and SDA.
2. On December 11, 2009, MRT found the Claimant no longer met a listing.
3. On January 6, 2010, the Claimant submitted to the Department a request for hearing.
4. The Claimant is 30 years old.
5. The Claimant completed schooling up through 9th grade.
6. The Claimant has employment experience as a construction worker.
7. The Claimant's limitations have lasted for 12 months or more.

8. The Claimant suffers from lower left calf pain, cyst in left knee, previous leg fracture, and recent left eye cataract surgery.
9. On [REDACTED], the Claimant's physician indicated the following: Limitations listed as temporary. Limited to lifting no weight, standing/walking less than 2 hours, sitting about 6 hours, required use of crutches, no limitations for hands and arms for repetitive action, limited the use of the left leg for operating foot/leg controls, no mental limitations noted.
10. On [REDACTED], the Claimant's physician indicated the following: Stable condition with limitations listed as follows: no lifting restrictions, indicated claimant could stand/walk 6 out of 8 hours in a day and listed no limitations on sitting or standing, no limitations on repetitive actions with use of hands or arms, no limitations on use of either foot or leg for operating foot controls, and no mental limitations.

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 (formerly known as the Family Independence Agency) 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 order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 R 416.901). The Department, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses.

The law defines disability as the inability to do substantial gainful activity (SGA) 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), an 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 a substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

The **first step** to be consider is whether the Claimant can perform Substantial Gainful Activity (SGA) defined in 20 CFR 416.920(b). In this case, the Claimant is not working. Therefore, the Claimant is not disqualified a this step in the evaluation.

The **second step** the trier of fact must determine if the Claimant's impairment (or combination of impairments) which meet or equal the severity of an impairment listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Claimant's medical record does not support a finding that the Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR Part 404, Part A. 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 any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued 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 your impairment(s) (see §416.928).

In this case, the Claimant was most recently approved MA-P and SDA in November 2008. In this case, the Administrative Law Judge, after comparing past medical documentation with current medical documentation, finds there is medical improvement. Specifically the Claimant's medical condition in regards to his abilities to stand/walk, sit and lift.

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 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 medical 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 cooperate;
- (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 previously stated, the Claimant was previously found to be disabled; however, the medical records presented establish that the condition has improved. Thus, an increase in the residual functional capacity exists which may relate to the Claimant's ability to do work. The Claimant has work history in skilled work in construction.

Accordingly, vocational factors such as age and education are evaluated to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v)

At the time of hearing, the Claimant was 30 years old thus considered to be younger age individual for MA-P and SDA purposes. The Claimant has a limited education with

prior work experience. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

In the record presented, the Claimant's residual functional capacity for work activities on a regular and continuing basis does include the ability to meet at least the physical and mental demands required to perform **medium work**. After review of the entire record and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II) as a guide, specifically Rule 203.26, it is found that the Claimant is not disabled for purposes of MA-P and SDA.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Claimant is no longer considered to be medically disabled.

Accordingly, the Department decision is hereby UPHeld.



Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 09/28/10

Date Mailed: 09/28/10

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.

JWO/dj

cc:

