

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

IN THE MATTER OF:



Reg. No: 2010-36475
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 12, 2010
Wayne County DHS (49)

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 October 12, 2010. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's continued Medical Assistance (MA-P) and State Disability Assistance (SDA) based upon its determination that claimant has medical improvement?

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 was a Medical Assistance and State Disability Assistance benefit recipient from a November 2009 medical review due to equally or meeting a listing or per a Vocational Rule.
- (2) On April 13, 2010, claimant filed a review application for his yearly review for Medical Assistance and State Disability Assistance benefits alleging continued disability.
- (3) On April 15, 2010, the Medical Review Team denied claimant's application stating that claimant had medical improvement.

- (4) On May 12, 2010, the department caseworker sent claimant notice that his application was denied.
- (5) On May 17, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (6) On June 7, 2010, the State Hearing Review Team again stated that claimant is capable of performing work pursuant to medical improvement and is able to perform light work per 20 CFR 416.967(b) pursuant to Medical Vocational Rule 202.20.
- (7) Claimant is a 45-year-old man whose birth date is [REDACTED]. Claimant is 5'7" tall and weighs 147 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills.
- (8) Claimant last worked in 2008 at the Quality Laundry as a laundry sorter. Claimant has also worked as a janitor, in maintenance, and doing landscaping.
- (9) Claimant alleges as disabling impairments: a gunshot wound to the back and legs, back and leg pain, hypertension, post-traumatic disorder (PTSD), and depression.

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).

In the instant case, claimant is not working and continues to receive Medical Assistance, State Disability Assistance and Food Assistance Program benefits.

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 engaged in substantial gainful activity and has not worked since 2008.

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).

At Step 2, claimant’s impairments do not equal or meet the severity of an impairment listed in Appendix 1.

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.

The objective medical evidence in the record indicates that a March 2, 2010, [REDACTED] up medical examination from internal medicine indicates that the examinee is well-developed, well-nourished, cooperative and in no acute distress. The examinee is awake, alert and oriented x3. The examinee is dressed appropriately and answers

questions fairly well. Vital signs: height 5'8", weight 150 pounds, pulse 80, respiratory rate 16, blood pressure 110/84, visual acuity without glasses 20/70 on the right and 20/200 on the left. HEENT: normocephalic and atraumatic. Eyes: the lids were normal. There was no exophthalmos, icterus, conjunctivae, erythema, or exudates noted. PERRLA: extraocular movements were intact. The ears have no discharge in the external auditory canals. No bulging or erythema, perforation of the visible tympanic membrane noted. In the nose, there was no septal deformity, epistaxis or rhinorrhea. In the mouth the teeth are in fair repair. The neck was supple. No JVD noted. No tracheal deviation. No lymphadenopathy. Thyroid is not visible or palpable. External inspection of the ears and nose reveal no evidence of acute abnormality. In the respiratory system, the chest is symmetric and equal to expansion. The lung fields are clear to auscultation and percussion bilaterally. There are no rales, rhonchi, or wheezes. No retractions noted. No accessory muscle usage noted. No cyanosis noted. There is no cough. In the cardiovascular area, there was normal sinus rhythm. S1 and S2 had no rubs, murmur or gallop. The gastrointestinal area was soft, benign, non-distended, non-tender with no guarding, rebound, palpable masses. Bowel sounds were present. Liver spleen are not palpable. The skin was positive for surgical scars. In the extremities, there were no obvious spinal deformity, swelling, or muscle spasms noted. Pedal pulses are 2+ bilaterally. There is no calf tenderness, clubbing, edema, varicose veins, brawny erythema, stasis, dermatitis, chronic leg ulcers and muscle atrophy or joint deformity or enlargement is noted. Positive for surgical scar over the right lateral leg. The examinee does not use a cane or aide for walking. He has a slight limp on the right side. Stance is normal. Tandem walk, heel and toe walk are done slowly while holding on to the table. Able to squat to 50% of the distance and recover and bend to 90% of the distance and recover. Examinee is right handed. Gross and fine dexterity bilaterally intact. Abduction of the shoulders is 0-150 degrees. Flexion of the knees is 0-150 degrees. Straight leg raising while lying is 0-50 while sitting and 0-90. In the neurologic area, the patient was alert awake and oriented to person, place and time. Cranial nerve 2, vision as stated in vital signs. 3-4 and 6 no ptosis, or nystagmus. Pupils were 2 millimeters bilaterally. No facial numbness. Symmetrical responses similar. Symmetrical facial movements noted. Can hear normal conversation and whispered voices. Swallowing was intact. Gag reflexes intact. Uvula midline. Head and shoulder movement against resistance are equal. No sign of tongue atrophy. No deviation with protrusion of tongue. Sensory functions were intact to sharp and dull gross testing. The motor exam revealed spare muscle tone without flaccidity, spasticity, or paralysis. Slight limp on the right side. The impression was a gunshot wound to the back and bilateral lower extremities with surgery on the abdomen and right lower extremity. Claimant continued to have chronic pain in his right lower extremity with a limp on his right side. He did have minor skin grafting as well, but continued to have chronic and on-going discomfort. He was taking [REDACTED] and [REDACTED] as well as [REDACTED] for this problem (p.22). All range of motions were normal (pp. 24-25).

This Administrative Law Judge did consider all 76 pages of medical reports contained in the file in making this decision.

In the instant case, there has been a decrease of medical severity and 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 was no substantial evidence which demonstrated that any prior disability decision was an error and none of the medical exceptions apply.

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, this Administrative Law Judge finds that that none of the second group of exceptions to medical improvement is found.

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.

Thus, this Administrative Law Judge finds that claimant's. 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 this case, this Administrative Law Judge finds claimant can perform at least sedentary work even with his impairments. This Administrative Law Judge finds that in this case, claimant can perform light or sedentary work even with his impairments.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

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. In this case, this Administrative Law Judge finds that claimant has the residual functional capacity to perform light or sedentary work and should be able to perform some of his prior work, even with his impairments. Claimant should be able to perform his work as a laundry sorter, even with his impairment.

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, pursuant to Medical Vocational Rule 202.20, a person who is 45 years old with 12 years of education with a history of unskilled work, who is limited light or sedentary work, is not considered disabled.

This Administrative Law Judge does take into account claimant's complaints of pain in that the diagnoses do support the claims. Subjective complaints of pain where there are objectively established medical conditions that can reasonably be expected to produce the pain must be taken into account in determining a claimant's limitations. *Duncan v Secretary of HHS*, 801 F.2d 847, 853 (CA6, 1986); 20 CFR 404.1529, 416.929.

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The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, page 1. Because the claimant no longer meets the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate

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.

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