

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2010-41434  
Issue No.: 4031  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date: August 4, 2010  
Oakland County DHS (04)

**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 August 4, 2010. 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 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 material fact:

1. Claimant has been an ongoing recipient of SDA benefits based upon disability as a result of his October 29, 2009, application.
2. On June 8, 2010, the department notified claimant that it intended to terminate his SDA benefits effective July 1, 2010, based upon the belief that claimant no longer met the requisite disability criteria.
3. On June 16, 2010, claimant filed a timely hearing request to protest the department's proposed negative action.
4. On July 1, 2010, the department terminated claimant's ongoing SDA benefits.

5. At the hearing, the department agreed to reinstate claimant's lost SDA benefits and supplement all lost benefits pending the outcome of the instant hearing. Further, the department agreed to terminate any effort to recoup claimant's SDA payments.
6. Claimant, age 39, is a high-school graduate.
7. Claimant last worked in October of 2009 as a cook. Claimant has also performed relevant work as a restaurant manager and waiter.
8. Claimant was hospitalized [REDACTED] as a result of shortness of breath and swelling of the bilateral lower extremities. His discharge diagnosis was congestive heart failure, cardiomyopathy secondary to alcohol, obstructive sleep apnea, hypertension, and alcohol abuse. Claimant underwent a cardiac catheterization which demonstrated severe nonischemic cardiomyopathy and heart failure.
9. Claimant was re-hospitalized [REDACTED] as a result of weakness, fatigue, shaking, and cold extremities. His discharge diagnosis was acute renal failure, hyperkalemia, elevated digoxin level secondary to renal failure, dilated cardiomyopathy, alcohol and nicotine abuse, history of congestive heart failure, and history of chronic renal failure secondary to hypertension.
10. Claimant currently suffers from congestive heart failure, chronic kidney disease, obstructive sleep apnea, hypertension, chronic fatigue, and shortness of breath with mild activity.
11. When comparing current medical documentation with documentation from the most recent December 22, 2009, approval, 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 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 (BAM), the Program Eligibility Manual (BEM) 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 Supplemental Security Income (SSI ) standards for at least 90 days. Other than the more limited 90-day duration, the department must

use the same operative definition for “disabled” when considering SDA as is used for 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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

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 working. Therefore, claimant may not be disqualified for SDA 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 found to be disabled for purposes of SDA by the Medical Review Team on December 22, 2009. On [REDACTED], claimant was evaluated by a consulting internist for the [REDACTED]. The consultant provided the following conclusions:

1. History of congestive heart failure secondary to dilated cardiomyopathy.

The patient had a coronary catheterization in October which showed normal coronary arteries, but did show a severely decreased ejection fraction estimated at approximately 10% from the heart path. The patient did have an echocardiogram which estimated an ejection fraction at approximately 23%. The patient is currently experiencing markedly decreased exercise tolerance and does not appear to be in fluid overload today.

2. History of possible sleep apnea...
3. History of hypertension.

On [REDACTED], claimant's treating internist diagnosed claimant with congestive heart failure, hypertension, obstructive sleep apnea, and chronic kidney disease. The physician noted that claimant is easily fatigued. The physician opined that claimant is capable of occasionally lifting less than ten pounds and limited to standing and walking less than two hours in an eight-hour work day. The physician indicated that claimant is incapable of pushing/pulling with the bilateral upper extremities. The physician noted that claimant is easily fatigued and short of breath. In this case, the Administrative Law Judge, after 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 applies, 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), is 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 to medical improvement, found at 20 CFR 416.994(b)(4), is as follows:

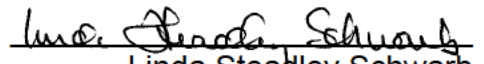
- 1) A prior determination was fraudulently obtained.
- 2) Claimant did not cooperate.
- 3) Claimant cannot be located.
- 4) Claimant failed to follow prescribed treatment which would be expected to restore claimant's ability to engage in substantial gainful activity.

After careful review of the record, this Administrative Law Judge finds that none of the above-mentioned exceptions applies to claimant's case. Accordingly, per 20 CFR 416.994, the undersigned concludes that claimant continues to be "disabled" for purposes of the State Disability Assistance program.

**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 State Disability Assistance program.

Accordingly, the department's determination in this matter is hereby reversed. The department is ordered to maintain claimant's eligibility for State Disability Assistance program benefits if claimant is otherwise eligible for same. The department shall review claimant's continued eligibility for State Disability Assistance in August of 2011.

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

Date Signed: August 24, 2010

Date Mailed: August 24, 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:

