

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: 2010-10844

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 4, 2010

Wayne County DHS

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 February 4, 2010. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly determine that claimant was no longer eligible to receive Medical Assistance (MA-P) and State Disability Assistance (SDA) based upon 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) The Medical Review Team approved claimant for Medical Assistance and retroactive Medical Assistance benefits on December 6, 2008, stating that he met Listing 6.02(a).
- (2) Claimant's case was scheduled for review in November 2009.

(3) On November 2, 2009, claimant filed a review application for Medical Assistance and State Disability Assistance benefits alleging disability.

(4) On November 4, 2009, the Medical Review Team denied claimant's case stating that claimant's impairments were nonexertional.

(5) On November 5, 2009, the department caseworker sent claimant notice that his application was denied and benefits would be cancelled accordingly.

(6) On November 13, 2009, claimant filed a request for a hearing to contest the department's negative action.

(7) On December 16, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of unskilled work per 20 CFR 416.968(a).

(8) The hearing was held on February 4, 2010. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(9) Additional medical information was submitted and sent to the State Hearing Review Team on February 4, 2010.

(10) On February 8, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing work in the form of medium work per 20 CFR 416.967(c), unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 303.29.

(11) Claimant is a 37-year-old man whose birth date is [REDACTED] Claimant is 5' 11" tall and weighs 300 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.

(12) Claimant last worked in 2007 as a cook in a sports restaurant.

(13) Claimant alleges as disabling impairments: memory problems, kidney problems, heart problems, depression, and polysubstance abuse.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 the instant case, claimant is not working and therefore not engaged in substantial gainful activity.

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 the instant case, claimant does not have an impairment or combination of impairments which meet or equal the severity of an impairment listed in Appendix I.

The objective medical evidence in the record indicates that claimant has an anxiety disorder, polysubstance abuse and mixed personality disorder. His AXIS GAF was 50 on 12/29/2009. He had a medical maintenance checkup and he went to jail for assault and battery. The patient demonstrated good grooming, timeliness, orientation x4, irritable behavior, good eye contact, normal speech, logical and coherent thought process, no psychosis evidenced, poor insight and average intelligence. After careful assessment of self harm risk, the patient was determined to have no current suicidal thoughts, intent or plan. (Claimant Exhibit, page 259)

A mental residual functional capacity assessment, dated October 23, 2009, indicates that claimant was not significantly limited in most areas and the assessor was unable to observe some areas. (Pages 22, 23)

A mental status examination, dated May 11, 2009, indicates that claimant was oriented to time, place and person. He was able to repeat 4 out of 4 numbers forwards and backwards, immediately. He was able to recall only 1 out of 3 objects after 5 minutes, with queues, he could recall 2 of the 3. His date of birth was [REDACTED] Past presidents were Lincoln, Washington, Obama. Large cities were St. Louis and Detroit. Famous people were John Travolta and Al Pacino. Current events were the bombings of the hotels in India. Calculations: 7 plus 5 equals 12, 6 times 5 equals 30, and 100 minus 7 equals 93, 86, 79, 72. In response to, the grass is greener on the other side of the fence, he said, "a better side is seen." When asked the meaning of don't cry over spilled milk, he said "don't worry about small stuff." When asked how a bush and a tree were different, he said "a tree is taller" and for similar, he said, "they both have leaves." If the claimant found a stamped, addressed envelope, he would "put it in the mailbox." If the claimant discovered a fire in a theatre, he would "get out." The patient said he wants to take care of himself, when asked about his plans for the future. His GAF was 45 and his prognosis was guarded. He would not be able to manage his own benefit funds. (Pages 36, 77)

A Disability Determination Service examination of May 11, 2009 indicates that claimant was an obese, white male in no distress. He was well oriented and not febrile. There was no pallor, jaundice or cyanosis. His weights was 268 pounds and his height was 5' 9 1/2" tall. His head was normocephalic. Extraocular movements were normal. Pupils were equal and reactive to light. There was no nystagmus. His uncorrected vision is 20/40 in the right eye and 20/25 in the left eye. Ears and nose and throat are within normal limits. Tongue is normal. Teeth are in fair condition. Neck was subtle. There were no carotid bruits, venous extension or thyroid

enlargement. He has a well-healed scar of tracheotomy. On the chest, there was no deformity or tenderness. Lungs were clear to percussion and auscultation. Respiratory rate is 18 per minute. Heart sounds of good quality, regular, there are no murmurs or cardiac enlargement. Blood pressure is 136/92. Heart rate is 92 beats per minute. Abdomen is obese, soft and non-tender. There was no organomegaly or CVA tenderness. Lumbosacral spine is in midline, non-tender and non-restricted. On the extremities, there are no varicosities, edema, calf tenderness or clubbing of the fingers. Pulses in both feet were normal. He was able to squat and perform fine and gross manipulation. Grip strength was 50 kg on the right and left hand. He was right-handed. There was no lymphadenopathy. Cranial nerves, speech, gait and coordination were normal. Romberg is negative. There is no motor or sensory deficit. Tendon reflexes are active and equal. Muscle tone is normal. There are no tremors, spasticity or muscle atrophy. Thought content and association are grossly normal. He was able to give the correct date, his Social Security number, his birth date, his children's birth dates, etc. However, he feels like he is not able to return to his occupation as a cook because of his memory impairment. His diagnosis includes status-post severe reaction to nuts with multiple complications, chronic depression, alcohol and substance abuse, and obesity. Considering his current objective findings, it is felt that claimant would be able to perform work-related activities requiring a very short memory. (Page 39)

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, there has been medical improvement related to claimant's ability to do work. There has been a decrease in the medical severity.

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 the first group of medical exceptions does not 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 a careful review of the record, this Administrative Law Judge finds that this group of exceptions does not apply.

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. This Administrative Law Judge finds that there has been an increase in claimant's residual functional capacity based upon the impairment that was present at the time of the most favorable medical determination. That improvement is related to claimant's ability to do work.

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 this case, claimant does have the residual functional capacity to perform light or sedentary work as well as medium 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).

Claimant testified on the record that he does have a driver's license and he can drive or he takes the bus. Claimant does cook, but not at the shelter. Claimant is able to grocery shop and clean his home, but not at the shelter. Claimant does mop and clean the bathroom, and he does write as a hobby and play basketball. He can stand for 3 hours, has no limits upon his ability to

sit. He can walk ½ a mile to a mile at a time and is able to squat, bend at the waist, dress himself, and tie his shoes and touch his toes. Claimant does not have consistent pain. Claimant is right-handed and his hands and arms are fine and his legs and feet are fine, his knees are fine.

Claimant testified he does smoke ½ a pack of cigarettes per day, and the heaviest weight he can lift is 50 to 75 pounds, and 25 pounds on a repetitive basis. Claimant testified that he does visit with his 14-year-old and 6-year-old children alone. In a typical day, he calls people and asks what he is supposed to do and he keeps a pad of paper with him so he doesn't have as many memory problems.

In the instant case, this Administrative Law Judge finds that claimant can perform work that he has done in the past. As a cook does not require strenuous physical exertion, there is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work which he has engaged in, in the past. Therefore, if claimant had not had already been denied in the prior step, he would have also been denied at this step.

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, claimant should be able to perform medium, light or sedentary work even with his impairments based upon an assessment of his age, education, and past work experience and his current residual functional capacity.

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. PEM, Item 261, page 1. Because the claimant no longer meets the definition of disabled

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