

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: 2010-24627
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 13, 2010
Muskegon County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 13, 2010. Claimant personally appeared and testified.

ISSUE

Did the claimant continue to be disabled and eligible for continuing Medical Assistance (MA) and 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. Claimant was approved for MA and SDA by department's Medical Review Team (MRT) in December, 2008, with a medical review date of November, 2009.

2. On February 19, 2010 MRT determined that the claimant was no longer disabled for MA and SDA eligibility purpose, as he was medically improved to be able to do other light work per Vocational Rule 202.18.

3. Department sent the claimant a notice telling him that his MA and SDA benefits will terminate on March 8, 2010. Claimant requested a hearing on March 1, 2010 and continues to receive MA and SDA benefits pending the outcome of this hearing.

4. On March 15, 2010 State Hearing Review Team also determined that the claimant has had medical improvement and was therefore no longer disabled for MA and SDA eligibility purposes, as he could perform a wide range of light work.

5. Claimant stated at the hearing that he had additional medical information to submit, and hearing record was left open until July 13, 2010. On July 15, 2010 department advised that the claimant had not submitted any additional information, and hearing record was closed.

6. Claimant is a 39 year old man whose birthday is [REDACTED]. Claimant is 6'5" tall and weighs 230 lbs. Claimant completed 10th grade, has a GED, and is currently studying for a college entrance exam as he wants to get a B.A. in religion and be in the mission field.

7. Claimant was in the navy and receives medical assistance from [REDACTED]. Claimant had been in prison from June, 1996 to November, 2008 and while there performed various duties including yard crew, kitchen help, and secretarial duties for the prison chaplain. Claimant worked for an electrical company in shipping and receiving prior to going to prison.

8. Claimant lives in a friend's basement, has a driver's license and drives to the store, cooks for himself, and does some basic cleaning. Claimant's hobby is riding his bicycle as it is easier than walking because he can lean to relieve pressure on his back.

9. Claimant alleges as hi impairments back pain and a broken collar bone.

10. Claimant has applied for Social Security disability and been denied, and is appealing the denial.

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 Manual (RFT).

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 (RFT).

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). Claimant testified that he is not working.

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). Claimant does not have such an impairment based on review of his medical record.

Claimant's medical record includes information used for previous MA and SDA approval. This information indicates that the claimant was seen in December, 2008 for complaint of back pain and numb legs. Claimant had recently been released from prison and brought x-ray reports from September, 2007 showing diffuse facet arthritic changes throughout the lumbar spine, and degenerative disk change at L4-5 and L5-X1 levels. December, 2008 letter from [REDACTED] states that the claimant has severe degenerative disk disease of the lumbar spine and herniation of discs in that area.

In March, 2009 claimant had back surgery including laminectomy and fusion. X-ray of claimant's lumbar spine following the surgery indicates unremarkable postoperative changes in the lower lumbar spine. Claimant reported in April, 2009 that his leg pain had subsided and remains as such. In June, 2009 x-rays of claimant's lumbar spine look good according to his orthopedic surgeon's note. X-rays of September, 2009 also showed good lumbar spine fusion.

On December 10, 2009 claimant was seen for a follow up visit with his orthopedic surgeon and reported having difficulty with his back with pain and weakness in the right lower extremity. No weakness could be detected by the examiner. Claimant did have pain in the right

aspect of his lower back but was neurologically intact on examination. Examiner was of the opinion that the claimant continues to be disabled from his back.

Claimant also broke his collar bone in a fall from a motorcycle in July, 2009 which did not heal by itself. Claimant underwent surgery in November, 2009 and x-ray of the clavicle showed excellent alignment, good screw fixation, and no looseness of the screws. Claimant's shoulder was re-checked in January, 2010 and x-ray showed excellent alignment of the fracture and screw that seemed to be in a well fixed position.

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.

Claimant was previously approved for MA and SDA based on severe back pain. Claimant did undergo back surgery and reported improvement following such surgery. X-rays of claimant's lumbar spine show no issues with any post-operative changes. Claimant had no weakness and was neurologically intact on exam in December, 2009. Claimant had therefore

undergone a medical improvement from the time previous MA and SDA eligibility approval was rendered. Analysis moves to Step 4.

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 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's impairment does have significant limitations upon his ability to work, as even with his back surgery he would be prevented from performing labor type jobs involving lifting, twisting, distance walking, etc. Claimant testified that he can sit for 10 to 15 minutes and then must change his position, stand for the about the same period of time and walk with a cane 2 to 4 blocks.

[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, claimant has been in prison for 12 years and before that worked in shipping and receiving, job he most likely would not be able to perform if it involved good deal of lifting and walking.

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 testified that he is currently studying for a college entrance exam and plans to pursue B.A. in religion. Claimant should be able to perform at least sedentary work even with his back issues. Claimant is a younger individual age 18-44 (he is 39), and has a GED. Vocational Rule 201.27 indicates that such an individual is not to be considered disabled even with only unskilled or no work history.

In conclusion, the claimant has had medical improvement since his previous MA and SDA benefit approval. Claimant also has the capacity to perform a wide range of at least sedentary work. Claimant therefore no longer meets disability criteria for MA and SDA.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department correctly determined that the claimant does not continue to be disabled and eligible for MA and SDA benefits.

Accordingly, department's action is AFFIRMED, and it is SO ORDERED.

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 30, 2010

Date Mailed: September 30, 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.

IR/tg

cc:

