

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-26347
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date:
April 22, 2010
Barry 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 April 22, 2010. Claimant personally appeared and testified.

This hearing was originally held by Administrative Law Judge Jana Bachman. Judge Bachman is no longer affiliated with the Michigan Administrative Hearing System Administrative Hearings for the Department of Human Services and this hearing decision was completed by Administrative Law Judge Landis Y. Lain by considering the entire record.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) 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 receiving Medical Assistance and State Disability Assistance benefits.
- (2) Claimant had a medical review date of January 31, 2010, and a case review date of August 31, 2010.
- (3) On February 26, 2010, the Medical Review Team denied claimant's application for Medical Assistance and State Disability Assistance benefits stating that claimant had medical improvement.

- (4) On March 4, 2010, the department caseworker sent claimant notice that his application would be denied because of medical improvement.
- (5) On March 12, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (6) On March 25, 2010, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence in requesting an independent physical consultative examination by an internist and copies of all treatment records, progress notes and specialized testing and patient and outpatient treatment from January 2010 to the most current period.
- (7) This case was transferred to Administrative Law Judge Landis Lain on March 15, 2011. Administrative Law Judge Landis Y. Lain issued an Interim Order Leaving the Record Open until June 15, 2011 to allow for the submission of the internist's examination and additional consultative examinations as requested by the State Hearing Review Team.
- (8) A medical appointment confirmation notice was sent to claimant on March 17, 2011, which indicated that claimant had an appointment scheduled for April 11, 2011. The caseworker also sent claimant notice that he needed to send on March 16, 2011, he needed to send to the caseworker complete names and addresses of medical providers as well as updated medical records.
- (9) On April 12, 2011, the caseworker indicated that claimant was a no call, no show for the internist's exam and had not provided any further verification information. That there was nothing further to submit to this claimant.
- (10) On the date of hearing, claimant is a 33-year-old man whose birth date is March 1, 1977. Claimant is 6' 2" tall and weighs 190 pounds. Claimant completed the 10th grade. Claimant is able to read and write and does have basis math skills.
- (11) Claimant last worked approximately five years before the hearing as a pasting ring manufacturer and a dishwasher and also did some factory work.
- (12) Claimant alleges as disabling impairments: a left leg amputation and chronic pain.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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 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 has not worked for approximately five years.

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 testified on the record that he lives alone and is supported by his church, State Disability Assistance, Medical Assistance, and Food Assistance Program benefits. Claimant does not have a driver's license and he is able to drive. He does cook and goes grocery shopping and completed housekeeping duties with the help of home help care. He described his typical day as getting up at 8 a.m. or 9 a.m., eating, watching television, eat lunch, do some housework, sit outside, have dinner and go to bed between 9 p.m. and 10 p.m. Claimant testified that he has pain in his wrists, right shoulder and had a torn rotator cuff and it is painful to use his crutches. Claimant testified that he can walk a quarter mile with both crutches and can stand for ten to fifteen minutes and can only walk a few steps with his prosthesis. He can sit for one hour at a time and the heaviest weight he can carry is ten pounds. Claimant testified that he is right-handed and that he does smoke three cigarettes per day and he does not drink alcohol or take any drugs. Claimant testified that his prosthesis is uncomfortable. This Administrative Law Judge considered all of the approximately 620 pages of medical reports contained in the file when making this decision.

An MRI of the right shoulder dated November 17, 2009 indicates mild degenerative problems of the acromioclavicular joint and contour of the acromion process contributing to mild impingement of the subacromial space. There are mild signal changes of impingement in the rotator cuff without full thickness or retracted tear. There is a small volume of joint fluid seen. There is a striated pattern of signal increase in the anterior portion of the superior glenoid labrum. (Page 72.) A May 13, 2009 progress note indicates that claimant's blood pressure was 124/80 on the left arm. His temperature was 97.3. His weight was 171 pounds with body mass index of 21.97. He was well in appearance, well-nourished, in no distress. Oriented x3, normal moving affect. Heart had no cardiomegaly or thrills; further rate or rhythm, no murmur or gallops, lungs clear to auscultation and percussion. His extremities were normal except for the stump on the left leg looks good. (Page 47.)

A January 7, 2010 progress note indicates that claimant's blood pressure was 130/70. His height was 6 feet. His weight was 204. His body mass index was 27.69. He was generally well appearing, well nourished, in no distress. Oriented x3. Normal mood and affect. Skin was normal except anular rash, right arm elbow area. The pharynx, colon mucosa not inflamed, no tonsillar hypertrophy or exudate. The neck is supple without lesions, bruits or adenopathy, thyroid not enlarged and nontender. Heart had no cardiomegaly or thrills; regular rate and rhythm, no murmur or gallop. The lungs were clear to auscultation and percussion. The abdomen bowel sounds were normal. No tenderness, organomegaly, masses or hernia. Extremities had no amputations or

deformities, cyanosis, edema or varicosities, peripheral pulses were intact. He was assessed with essential hypertension unspecified. Reflex esophagitis and a rash nonspecific skin interruption. (Page 33.)

On [REDACTED] and [REDACTED] progress note indicates that claimant was seen for prosthetic follow-up. They have transparent test socket #1 prepared for him and he donned this initially with reply fit and progressed rapidly to an 8 plastic sock fit. They established initial height and alignment on the parallel bars and claimant was able to ambulate in the parallel bars with bilateral hand support. They were encouraged that although not fully weight bearing at this point, he was able to transfer his body weight onto the prosthesis without reports of distal discomfort in his residium. The reasons for the dramatic reduction in limb volume since preparing a test socket remain unknown. In following discussion, a decision was made to have claimant return to reassess limb volume to determine if there is a return of edema or continued reduction in limb volume. (Page 20.) According to page 18, claimant lost his left lower leg by amputation on October 8, 2008 secondary to trauma sustained in a dirt bike accident with delayed healing. He is now sufficiently healed for prosthetic fitting and has a prescription from his physician for a prosthesis. Prosthesis is medically necessary to resume ambulation and harmony within the community. Claimant was seen again on November 5, 2009 for initial evaluation of his laminated socket with pelite liner. He donned the socket successfully with a 1+ socket and began ambulation in the parallel bars with bilateral hand support. As he acclimated to the socket, he was quickly able to resort to one hand support in the parallel bars. Gait observation reveals a good gait pattern of following ambulation. Claimant reports no socket discomfort. He had the ability to transfer weight to the amputated side but with caution to use the limb quite sparingly before beginning therapy, to avoid tissue breakdown if he began ambulation at aggressive level prematurely (Page 17).

On November 12, 2009, another progress note shows that with ongoing use of the prosthetic socket, claimant was experiencing some tissue irritation at the anterior distal and distal aspect of a tibia. The prosthesis was removed and inspection revealed irritated tissue in the corresponding area. The prosthesis was retrieved and the area relieved by removing both liner material and socket material in the core area. Subsequent ambulation reveals restored temper.

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.

This Administrative Law Judge finds that there is new medical improvement in this case. In addition, even if there had not been medical improvement, claimant has not cooperated in attending the internist's evaluation to determine whether or not he continues to be medically disabled.

An impairment or combination of impairments is not severe and a finding of not disabled is made at Step 2 when medical evidence establishes only a slight abnormality or combination of slight abnormalities, which would have no more than a minimal effect on an individual's ability to work, even if the individual's education and/or work experience were specifically considered. Social Security Ruling 85-28. In other words, a finding of no severity is appropriate when a person's impairments have no more than a minimal effect on his or her physical or mental abilities to perform basic work activities.

Since claimant has failed to attend the internist's examination or provide updated medical information, he is not in compliance with his treatment program, therefore, a finding of not disabled must be found.

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 none of the exceptions herein 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 the second exceptions to medical improvement do 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.

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, this Administrative Law Judge is unable to assess claimant's ability to engage in basic work activities as he has not provided information about his residual functional capacity and has not attended the examination which was requested by the State Hearing Review Team.

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, the Administrative Law Judge does not have the appropriate information in the form of updated medical information and an internist's examination which would assist the Administrative Law Judge in determining claimant's residual functional capacity assessment pursuant to his age, education, and past work experience.

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 does not meet 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.

The department has established that a necessary competent, material and substantial evidence on the record, that it was acting in compliance with department policy when it determined that claimant is no longer eligible to receive Medical Assistance and State Disability Assistance benefits based upon medical improvement.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's continued application for Medical Assistance and State Disability Assistance benefits. This Administrative Law Judge finds that claimant has failed to follow the prescribed treatment and therefore, an assessment of claimant's continued disability cannot be made under the circumstances. The department has stated that claimant should be able to perform a wide range of sedentary work even with his impairments. The department has established its case by a preponderance of the evidence and has established by the evidence contained in the file that claimant does have medical improvement.

Accordingly, the department's decision is AFFIRMED.



Landis Y. Lain
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 28, 2011

Date Mailed: June 29, 2011

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.

LYL/tg

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