

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

IN THE MATTER OF:



Reg. No: 2010-40925
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date:
July 28, 2010
Lenawee County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain for 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 July 28, 2010. Claimant personally appeared and testified.

This hearing was originally held by Administrative Law Judge Ivona Rairigh. Ivona Rairigh is no longer affiliated with the Michigan Administrative Hearing System Administrative Hearings for the Department of Human Services. 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 determine that claimant was no longer disabled and deny his review application for 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) Claimant was a Medical Assistance benefit recipient and his Medical Assistance case was scheduled for review in November 2009.
- (2) In November 2009, claimant filed a review application for Medical Assistance and State Disability Assistance benefits alleging continued disability.

- (3) On July 17, 2010, the Medical Review Team denied claimant's application stating that claimant had medical improvement.
- (4) On June 21, 2010, the department caseworker sent claimant notice that his application was denied.
- (5) On June 24, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (6) On July 8, 2010, the State Hearing Review Team again denied claimant's review application stating in its' analysis and recommendation: the claimant was approved benefits in June 2009 by the Administrative Law Judge. On July 30, 2009, the claimant underwent back surgery. He has had very slow improvement following his surgery. However, the records do show that his condition has been improving. In April 2010 his neurological examination was within normal limits. Straight leg raise caused back pain and leg pain at 80 degrees bilaterally. While the claimant continues to report on-going pain, his pain has improved. In March 2010 he was actually not using the patch or oral analgesic medications. Based on the objective evidence, the claimant has had improvement with surgery and would be capable of light work currently. The claimant has had medical improvement. The claimant's impairment's do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of light work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of a younger individual, 12th grade education and a history of unskilled and semi-skilled work, MA-P is denied due to Medical Improvement and using Vocational Rule 202.20 as a guide. SDA is denied per PEM 261 because the nature and severity of the claimant's impairment's would no longer preclude work activity at the above stated level for 90 days.
- (7) On the date of hearing claimant was a 38-year-old man whose birth date is [REDACTED]. Claimant is 5' 4" tall and weighs 170 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 a car parts factory in 2007. Claimant has also worked as a general laborer.
- (9) Claimant alleges as disabling impairment's: low back problems, a 2007 work injury for which she received an unemployment compensation settlement [REDACTED] in the amount of \$ [REDACTED].

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/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 this case, the claimant is not engaged in substantial gainful activity and has not worked since 2007.

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).

The objective medical evidence in the record indicates that in [REDACTED] the claimant stood with a marked right list. He sat with his knee up toward his chest. Left ankle reflex was absent to trace, 1+ right and normal at the knees. Straight leg raise was 30 degrees on the left with pain to the foot. He had back and left buttock pain at 50-60 degrees on the right. There was mild give way about the left hip with pain. There was no foot drop. He was able to walk on heel but had poor toe off on left. Straight leg raise was positive seated on the left. He had left antalgic gait (p. 188).

On [REDACTED] the claimant underwent L4-L5 left sided microdiscectomy (p. 68).

In [REDACTED] the claimant reported he had excellent pain relief following his surgery. However, he reported 2 weeks earlier he had increased onset in his leg pain. On examination he had no motor deficits. Straight leg raise was negative. Sensation was intact and his vascular examination was unremarkable (p. 52).

An MRI dated [REDACTED] did not reveal any new disc herniations. The doctor felt it was still early with regards to his healing time. In [REDACTED] the claimant appeared well. He moved in a smooth manner. He had normal strength on manual muscle testing. The doctor's impression is that the claimant was improving. He was to increase his activities in a very careful manner (p. 42).

On [REDACTED] the claimant was restricted to not lift more than 30 pounds. He may attempt to work without restrictions as of [REDACTED] (p. 41).

An MRI in [REDACTED] showed narrowing of the L4-5 and L5-S1 discs as well as postoperative enhancing fibrosis in the left spinal canal of the L4-5 level (p. 21).

In [REDACTED] the claimant had stopped using his patch because of itching. He reported that his pain had increased with stopping the patch. However, he was not using any oral analgesic medications at the time. On examination he appeared comfortable. Left straight leg raise seated at 90 degrees produced only mild to moderate pain through his left lower extremities. Straight leg raise was negative on the right. Strength was normal. Minimally, left antalgic gait pattern noted. No device utilized. Able to walk on heels and toes. No guarding noted when transitioning between sit and stand. Grooming was good as was mood. 2+ patellar and 1+ ankle reflexes bilaterally. Impression was persistent left lower extremity pain, improving. Again the doctor noted that the claimant appeared to be improving (p.31).

In [REDACTED] the claimant's gait was normal. He walked on heels and toes. There was no foot drop. Strength and tone were normal in the lower extremities. Reflexes were bilateral in the lower extremities. Sensation was normal in the lower extremities (p. 28).

The claimant's straight leg raise was 80 degrees bilaterally with increased low back pain and lower extremity pain. He has LS tenderness. The remainder of his examination was within normal limits (p. 19).

A medical examination report dated [REDACTED] indicates that the clinical impression is that claimant is stable. He could occasionally carry less than 10 pounds. He could stand or walk less than 2 hours in an 8 hour work day and sit less than 6 hours in an 8 hour work day. He did not require assistive devices for ambulation. He could use both of his upper extremities for simple grasping, reaching, pushing and pulling and fine manipulating and could operate foot and leg controls with both feet and legs. He had no mental limitations (pp. 18-20).

In the instant case, claimant does show medical improvement.

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.

In the instant case, this Administrative Law Judge finds that claimant does have medical improvement and his medical improvement is related to the claimant's ability to perform substantial gainful activity. Thus, this Administrative Law Judge finds that claimant's review application for Medical Assistance and State Disability Assistance benefits should be cancelled based upon the fact that claimant does have Medical Improvement. 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.

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 could probably perform his past work as a general laborer as long as he was not required to lift over 30 pounds

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, based up on the claimant's vocational profile of , MA-P is denied using Vocational Rule as a guide. Claimant can perform other work in the form of light work per 20 CFR 416.967(b). This Administrative Law Judge finds that claimant does have medical improvement in this case and the department has established by the necessary, competent, material and substantial evidence on the record that it was acting in compliance with department policy when it proposed to cancel claimant's Medical Assistance and State Disability Assistance benefits based upon medical improvement.

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.

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 disability and application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence. Claimant does have medical improvement based upon the objective medical findings in the file.

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: July 13, 2011

Date Mailed: July 18, 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/alc

cc:

