

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

IN THE MATTER OF:



Reg. No: 201041966

Issue No: 2009/4031



Hearing Date: September 30, 2010
Tuscola County DHS

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

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, an in-person hearing was held on September 30, 2010.

ISSUE

Did the Department of Human Services (DHS) properly propose to close claimant's Medical Assistance (MA) and State Disability Assistance (SDA) at review?

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 previously approved MA-P and SDA based upon a 10/5/09 MRT approval. Claimant's case was scheduled for review in May 2010, at issue herein.
2. There is no retro MA issue herein.
3. On June 7, 2010, the MRT denied continuing eligibility.
4. On June 10, 2010, the DHS issued notice.
5. On June 21, 2010, claimant filed a timely hearing request. At the administrative hearing held herein, the department stipulated it failed to reinstate the case. The department stipulated it would immediately reinstate the case after the administrative hearing. Claimant has been receiving benefits since the time of the administrative hearing.
6. The status of any SSI claim with SSA is unknown.

7. On July 19, 2010, the State Hearing Review Team (SHRT) denied claimant. Pursuant to the claimant's request to hold the record open for the submission of new and additional medical documentation, on August 4, 2011, SHRT once again denied claimant.
8. As of the date of review, claimant was a 52-year-old male standing 5'5" tall and weighing 160 pounds. Claimant has an 11th grade education.
9. Claimant testified that he does not currently have an alcohol/drug abuse problem. Claimant testified that he was an alcoholic and in rehab in February, 2010. Claimant's medical file is replete with diagnoses of alcohol abuse. Claimant testified that he does not smoke. Medical evidence in the record indicates that claimant has a history of smoking more than two packs per day for more than 30 years. Claimant's nicotine addiction has compounded his medical history with regards to alleged COPD and heart issues.
10. Claimant testified that he does not have a driver's license due alcohol offenses.
11. Claimant is not currently working. Claimant's work history is medium, skilled employment.
12. Claimant alleges disability on the basis of bilateral rotor tear injuries, post surgery left shoulder, COPD, myocardial infarction, dizziness, blackouts.
13. The July 19, 2010 SHRT findings and conclusions of its decision are adopted and incorporated by reference herein.
14. The subsequent August 4, 2011 SHRT decision is adopted and incorporated to the following extent:

Medical summary: Note post left surgery arthroscopy, no limitations after three months. Per office visit claimant was doing well, had alcohol abuse treatment, current ejection fraction post MI—60 to 70%. Does have bilateral wheezing and refuses to quit smoking. Exhibit 15. 4/7/2010 [less than one month prior to application]. Pulmonary function study reduced but within normal limits. Treating source: Frequently 10 pounds, sit stand walk sit of 8 hours, no reaching. SSA physical exam normal left shoulder range of motion, significantly reduced right shoulder range of motion. Negative straight leg raises, limited use of right hand.

Recommendation: Claimant's impairments and the evidence of the medical record indicates he retains capacity to perform

a wide range of light exertional work that does not require more than the occasional use of the right upper extremity with no overhead reaching. Applying the biographical data, disability denied per Vocational Rule 202.11 as a guide.

15. New medical evidence collected from [REDACTED] [REDACTED] [REDACTED] dated June 15, 2011 states in part:

He has very limited use of the right hand. Now that he has quit smoking I expect his lung problems to improve as well as his heart problems. He does report problems with blackouts and dizziness. This might impair his ability to operate heavy equipment as he has done in the past.

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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).

Statutory authority for the SDA program states in part:

- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 CFR 416.901). DHS, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses. Michigan administers the federal Medicaid program. In assessing eligibility, Michigan utilizes the federal regulations.

Federal regulations are quite specific with regards to review cases. In such cases as is at issue herein, the law is quite specific with regards to considerations which must be taken into account for review cases. These regulations and policy states in part:

...the medical evidence we will need for a continuing disability review will be that required to make a current determination or decision as to whether you are still disabled, as defined under the medical improvement review standard.... 20 CFR 416.993.

...In some instances, such as when a source is known to be unable to provide certain tests or procedures or is known to be nonproductive or uncooperative, we may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that your disability has ended, we will develop a complete medical history covering at least the 12 months preceding the date you sign a report about your continuing disability status.... 20 CFR 416.993(b).

...If you are entitled to disability benefits as a disabled person age 18 or over (adult) there are a number of factors we consider in deciding whether your disability continues. We must determine if there has been any medical improvement in your impairment(s) and, if so, whether this medical improvement is related to your ability to work. If your impairment(s) has not so medically improved, we must consider whether one or more of the exceptions to medical improvement applies. If medical improvement related to your ability to work has not occurred and no exception applies, your benefits will continue. Even where medical improvement related to your ability to work has occurred or an exception applies, in most cases, we must also show that you are currently able to engage in substantial gainful activity before we can find that you are no longer disabled. 20 CFR 416.994(b).

Medical improvement. Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued 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 your impairment(s).... 20 CFR 416.994(b)(1)(i).

Medical improvement not related to ability to do work.

Medical improvement is not related to your ability to work if there has been a decrease in the severity of the impairment(s) as defined in paragraph (b)(1)(i) of this section, present at the time of the most recent favorable medical decision, but no increase in your functional capacity to do basic work activities as defined in paragraph (b)(1)(iv) of this section. If there has been any medical improvement in your impairment(s), but it is not related to your ability to do work and none of the exceptions applies, your benefits will be continued.... 20 CFR 416.994(b)(1)(ii).

Medical improvement that is related to ability to do work.

Medical improvement is related to your ability to work if there has been a decrease in the severity, as defined in paragraph (b)(1)(i) of this section, of the impairment(s) present at the time of the most recent favorable medical decision **and** an increase in your functional capacity to do basic work activities as discussed in paragraph (b)(1)(iv) of this section. A determination that medical improvement related to your ability to do work has occurred does not, necessarily, mean that your disability will be found to have ended unless it is also shown that you are currently able to engage in substantial gainful activity as discussed in paragraph (b)(1)(v) of this section.... 20 CFR 416.994(b)(1)(iii).

The essence of these regulations requires a seven step analysis. The first two requires an assessment as to whether or not there has been improvement from the time claimant was initially approved.

In this case, medical evidence supports finding that claimant's conditions have improved. Moreover, he is expected to improve even more so now that he has ceased smoking. See [REDACTED]' June 13, 2011 report.

The next step requires an assessment as to whether or not the improvement is related to the ability of claimant to engage in work and work-like settings. Referring to the same medical evaluation of June 13, 2011, [REDACTED] states that his expected lung problems which are expected to improve as well as his heart problems might impair his ability to operate heavy equipment. Thus, claimant can do other work.

Once an assessment of the first two steps is made, the remaining five is basically an application of the sequential analysis. Thus, federal regulations regarding the sequential analysis states in pertinent part:

"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.

The federal regulations require that several considerations be analyzed in sequential order:

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). If no, the analysis continues to Step 2.
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.909(c).
3. Does the impairment appear on a special Listing of Impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. Sections 200.00-204.00(f)?
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-

204.00? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application claimant has the burden of proof pursuant to:

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

...Medical reports should include --

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as sure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your

statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.

- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

Applying the sequential analysis herein, claimant is not ineligible at the first step as claimant is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities

in claimant's favor, this Administrative Law Judge (ALJ) finds that claimant meets both. The analysis continues.

The third step of the analysis looks at whether an individual meets or equals one of the Listings of Impairments. 20 CFR 416.920(d). Claimant does not. The analysis continues.

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by claimant in the past. 20 CFR 416.920(f).

In this case, this ALJ finds that claimant cannot return to past relevant work on the basis of the medical evidence. The analysis continues.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge concurs with the SHRTs conclusion that applying his biographical data to the medical vocational grid rule requires a finding of not disabled pursuant to Rule 202.11 as a guide.

In reaching this conclusion, it is noted that claimant's smoking is the "individual responsibility" type of behaviors reflected in the *SIAS v Secretary of Health and Human Services*, 861 F2d 475 (6th cir 1988) decision. In *SIAS*, the claimant was an obese, heavy smoker who argued that he could not afford support hose prescribed by his doctor for acute thrombophlebitis. The doctor also advised claimant to reduce his body weight. The court said in part:

...The claimant's style of life is not consistent with that of a person who suffers from intractable pain or who believes his condition could develop into a very quick life-threatening situation. The claimant admitted to the ALJ he was at least 40 pounds overweight; ignoring the instructions of his physician, he has not lost weight.

...The Social Security Act did not repeal the principle of individual responsibility. Each of us faces myriads of choices in life, and the choices we make, whether we like it or not, have consequences. If the claimant in this case chooses to drive himself to an early grave, that is his privilege—but if he is not truly disabled, he has no right to require those who pay Social Security taxes to help underwrite the cost of his ride. *SIAS*, supra, p. 481.

In *SIAS*, the claimant was found not truly disabled because the secretary disregarded the consequences resulting from the claimant's unhealthy habits and lifestyles—including the failure to stop smoking. *AWAD v Secretary of Health and Human Services*, 734 F2d 288, 289-90 (6th cir 1984).

The 6th Circuit has held that subjective complaints are inadequate to establish disability when the objective evidence fails to establish the existence of severity of the alleged pain. *McCormick v Secretary of Health and Human Services*, 861 F2d 998, 1003 (6th cir 1988).

It is further noted that claimant in part requested continuing eligibility because claimant thought he needed more surgery. While it is not clearly stated in the medical evidence, this Administrative Law Judge notes that claimant has continued to have medical coverage for almost a year beyond this point and presumably has taken care of the arthroscopy surgery he felt he needed. Even without the surgery, under Medical Vocational Grid Rule 202.11, a finding of not disabled is required.

For these reasons, and for the reasons stated above, continuing eligibility is not shown.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's proposed actions were correct.

Accordingly, the department's proposed determination in this matter is hereby UPHELD.

/s/ _____
Janice G. Spodarek
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: October 10, 2011

Date Mailed: October 10, 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 mailing date of the rehearing decision.

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