

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201051058

Issue No: 2009/4031

[REDACTED]

Hearing Date:

October 6, 2010

Roscommon 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 October 6, 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 State Office of Administrative Hearings and Rules 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 determine that claimant was no longer eligible to receive Medical Assistance (MA) and State Disability Assistance (SDA) benefits based upon its determination that claimant has 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 receiving Medical Assistance (MA) and State Disability Assistance (SDA) benefits.
2. Claimant's case was scheduled for medical review in July 2010.
3. On July 30, 2010, the Medical Review Team (MRT) denied claimant's continued application stating that claimant had medical improvement.
4. On August 4, 2010, the department caseworker sent claimant notice that his application would be denied based upon medical improvement.

5. On August 20, 2010, claimant filed a request for a hearing to contest the department's negative action.
6. On September 7, 2010, the State Hearing Review Team (SHRT) again denied claimant's application stating in its analysis and decision: The medical evidence submitted for review indicates that the claimant's conditions have improved with treatment and does not preclude all work. In following the sequential evaluation process, the claimant is not engaged in substantial gainful activity. The claimant's impairments do not meet or equal the intent of a Social Security Listing. The medical information submitted for review indicates that the claimant retains the capacity to perform a wide range of unskilled light work that does not require excessive use of the right upper extremity. Therefore, based on the claimant's vocational profile of a younger individual with a high school or more education and an unskilled work history, MA-P and SDA are denied using Vocational Rule 202.20 as a guide and per the provisions of 20 CFR 416.994.
7. On the date of hearing, claimant was a 47-year-old man whose birth date is [REDACTED]. Claimant was 5'8" tall and weighed 130 pounds. Claimant completed the 12th grade and does have a few credits from community college. Claimant is able to read and write and does have basic math skills.
8. Claimant last worked in 2002 as a deli counter clerk in a grocery store. Claimant has also worked in maintenance and electrical.
9. Claimant alleges as disabling impairments: depression, bipolar disorder, chronic pancreatitis, injury to the right arm and hand.

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 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).

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 is not engaged in substantial gainful activity and has not worked since 2002. Claimant is not disqualified from receiving disability at the first step.

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). This Administrative Law Judge finds that claimant does not have an impairment or combination of impairments which meet or equal 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 this case, the medical documents indicate that the previous decision of July 2009 reported the claimant with chest pain, right hand pain and problems with memory, anger

and depression (pg 28). Medical records from July 2010 report a successful medical treatment for a pancreatic flare (pg 245). On examination, the claimant was 67" tall and weight 134.6 pounds. The heart was functioning with a regular rate and rhythm with no reported chest pain. The lungs were clear to auscultation. Blood pressure was 120/60. Peripheral pulses were present and equal bilaterally (pg 125). A medical assessment from July 2010 reported with pain medication there was no worsening of the right arm page (pg 249). At the July 2010 medical review, the claimant was alert and oriented to person, time and situation. He had appropriate mood and affect. Remote and recent memory were intact. Judgment and insight were intact. He was well appearing and in no acute distress (pg 249). The claimant reported in July 2010 that he is independent in activities of daily living. He cares for his personal needs and fixes his own meals. He does housework such as laundry and vacuuming and takes the bus to go grocery shopping (pg 252-256). This Administrative Law Judge finds that there has been a decrease in medical severity and medical improvement.

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 first group of exceptions to medical improvement apply in this case.

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 none of the second group of exceptions to medical improvement applies in this case.

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, based on claimant's vocational profile of a younger individual with a high school or more education and unskilled work history, MA-P and SDA would be denied based upon Medical Vocational Rule 202.20 as claimant has retained the ability to engage in basic work activities.

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.

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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

In the instant case, claimant could perform some of his prior work even with his impairments. Claimant could probably perform work as a deli counter clerk even with his impairments.

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, given claimant's age, education and past work experience, he should be able to perform a wide range of light unskilled work that does not require excessive use of the right upper extremity and would be denied Medical Assistance and State Disability Assistance benefits using Vocational Rule 202.20.

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, pg 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.

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 determined that claimant was not eligible to receive continued Medical Assistance and/or 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. The claimant should be able to perform a wide variety of light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

/S/

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

Date Signed: April 22, 2011

Date Mailed: April 22, 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.

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