

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.: 2010-9444
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
January 27, 2010
Wayne County DHS (18)

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 hearing was held on January 27, 2010. Claimant appeared and testified.

ISSUE

Whether the Department of Human Services (DHS or Department) properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) and State Disability Assistance (SDA) programs?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as a material fact:

1. In July of 2008, Claimant was approved for MA-P.
2. On review, the Medical Review Team denied Claimant's request.

3. On October 22, 2009, Claimant submitted to the Department a request for hearing.
4. The State Hearing and Review Team (SHRT) denied Claimant's request.
5. Claimant is 48 years old.
6. Claimant completed schooling up through 6th grade and is unable to read or write.
7. Claimant has employment experience as an oil technician and truck driver.
8. Claimant's limitations have lasted for 12 months or more.
9. Claimant suffers from bipolar disorder, diabetes, heart disease, rheumatoid arthritis and COPD.
10. Claimant has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.
11. Claimant has significant limitations on understanding, carrying out, and remembering simple instructions; use of judgment; responding appropriately to supervision, co-workers and usual work situations; and dealing with changes in a routine work setting.

CONCLUSIONS OF LAW

The Medical Assistance (MA-P) 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 administers the MA-P 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 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 (20R 416.901). The

Department, being authorized to make such disability determinations, utilizes the Supplemental Security Income (SSI) definition of disability when making medical decisions on MA applications. MA-P (disability), also known as Medicaid, is a program designated to help public assistance claimants pay their medical expenses.

The law defines disability as the inability to do substantial gainful activity (SGA) 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 State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 *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).

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Other specific financial and non-financial eligibility criteria are found in PEM 261.

Federal regulations require that the Department use the same operative definition for “disabled” as used for SSI under Title XVI of the Social Security Act. 42 CFR 435.540(a).

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).

The first step to be considered is whether the claimant can perform SGA defined in 20 CFR 416.920(b). In this case, the Claimant is not working. Therefore, Claimant is not disqualified at this step in the evaluation.

In the second step, the trier of fact must determine if the claimant's impairment (or combination of impairments) meets or equals the severity of an impairment listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that Claimant's medical record does not support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR Part 404, Part A. Accordingly, the sequential evaluation process must continue.

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 any decrease in the medical severity of the claimant's impairment(s) which was present at the time of the most recent favorable medical decision that the claimant was 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 the claimant's impairment(s). (See §416.928.) 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, Claimant was most recently approved for MA-P in [REDACTED]. Claimant is diagnosed with bipolar disorder, diabetes, heart disease, rheumatoid arthritis and COPD. Claimant has made several attempts at suicide including two additional attempts since [REDACTED]. Claimant testified he suffers with back problems, impaired walking, arms hurt, neck pain, some chest pain, shortness of breath, uses cane at times to walk, poor memory, dizzy spells, needs help with medications, can walk a block, can sit for about an hour, right hand has tremors, can stand for 15 minutes, can lift a gallon of milk, racing thoughts, suicidal thoughts, hears and sees things, hears people calling his name, isolates self, stays in bed, will go two weeks without showering, feels people he doesn't know want to hurt him and has consistent crying spells. Claimant's daughter testified that Claimant has set couch on fire, is peeing in the sink, tried to overdose on medications, and is mean and violent.

In this case, the Administrative Law Judge, after comparing past medical documentation with current medical documentation, finds there is no 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).

In 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:

- *Substantial evidence shows that you are the beneficiary of advances in medical or vocational therapy or technology (related to your ability to work).*

- *Substantial evidence shows that you have undergone vocational therapy (related to your ability to work).*
- *Substantial evidence shows that based on new or improved diagnostic or evaluative techniques your impairment(s) is not as disabling as it was considered to be at the time of the most recent favorable decision.*
- *Substantial evidence demonstrates that any prior disability decision was in error.*

In examining the record, this Administrative Law Judge finds that there is nothing to suggest that any of the exceptions listed above applies to Claimant's case.

The second group of exceptions to medical improvement, found at 20 CFR 416.994(b)(4), are as follows:

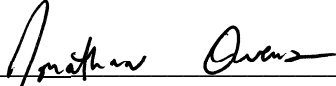
- *A prior determination or decision was fraudulently obtained.*
- *You did not cooperate with us.*
- *Claimant cannot be found..*
- *Claimant failed to follow prescribed treatment which would be expected to restore your ability to engage in substantial gainful activity.*

After careful review of the record, this Administrative Law Judge finds none of the above-mentioned exceptions applies to Claimant's case. Accordingly, per 20 CFR 416.994, this Administrative Law Judge concludes that Claimant's disability for purposes of Medical Assistance and State Disability Assistance must continue.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant continues to be medically disabled.

Accordingly, the Department's decision is hereby REVERSED and the Department is ORDERED to maintain Claimant's eligibility for MA-P and SDA if otherwise eligible for program benefits. A review of this case shall be set for May 2011.



Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 17, 2010

Date Mailed: May 17, 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.

JWO/pf

cc:

[REDACTED]