

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No. 2011-27217
Issue No. 2009; 4031
Case No. [REDACTED]
Hearing Date: July 6, 2011
Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on July 6, 2011.

ISSUE

Was a recovered nondisability established?

FINDINGS OF FACT

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

1. The claimant is currently unemployed.
2. Claimant's vocational factors are: age 49, high school education, and past work experience as an unskilled/semi-skilled light and medium employment.
3. On November 24, 2009, the claimant was originally approved for Medicaid/SDA based on bladder cancer.
4. On March 11, 2011, the DHS terminated the claimant's Medicaid/SDA per BEM 260/261, with a hearing request on March 24, 2011.

5. A medical exam on February 12, 2010 states the claimant's pathology demonstrated residual T1 transitional cell carcinoma of the bladder; that margins were negative; that lymph nodes were negative; that he was also found to have Gleason 6 prostate cancer with negative margins; that he is able to urinate on his own without difficulty; that he continues to have some stress urinary incontinence; and that he wears three pads per day that can be quite wet; that there is no evidence of cancer recurrence (Medical Packet, pages 43 and 45).
6. Medical exam on February 25, 2010 states an assessment of invasive bladder cancer and prostate cancer, status post cystectomy with neobladder formation, with no evidence of recurrent disease. (Medical Packet, page 155.)
7. Medical exam on April 28, 2010 states the claimant's assessment of invasive transitional cell carcinoma, status post prostatectomy with neobladder and with no evidence of recurrence (Medical Packet, page 156.)
8. Medical exam on April 30, 2010 states the claimant was found to have muscle invasive bladder cancer; and that he underwent cystectomy and neobladder on October 7, 2009 without complications; that he has improvements with stress urinary incontinence; he no longer wears pads; and that he was informed that he may develop worsening incontinence since we dilated his bladder neck contracture in the office today (Medical Packet, pages 39 and 41).
9. Medical exam on July 9, 2010 states the claimant was having difficulty catheterizing and was diagnosed with a bladder neck contracture which was dilated in the office on April 30, 2010; that he states he is now catheterizing twice a day without difficulty; that he continues to have a stable mild stress incontinence; and that he is wearing three pads per day that are only mildly wet when he changes them (Medical Packet, page 34).
10. Medical exam on October 14, 2010 states the claimant's assessment of bladder cancer with no evidence of recurrent disease (Medical Packet, page 159).
11. Medical exam on December 21, 2010 states the claimant's strength 5/5 biceps bilaterally, strength 5/5, triceps bilaterally, strength 5/5, dorsiflexion feet bilaterally, strength 5/5 plantar flexion feet bilaterally, no joint effusions, no joint erythema, no synovitis, tenderness to palpation whole of his right upper extremity, no big difference in the circumference of both arms, no obvious evidence of erythema or palpable cord (Medical Packet, pages 220 and 221).
12. SHRT report dated April 15, 2011 states the claimant's impairments do not meet/equal a Social Security Listing (Medical Packet, page 281).

CONCLUSIONS OF LAW

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).

Facts above are undisputed.

"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.

...To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decision to stop disability benefits are made objectively, neutrally and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be continued at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

The steps are:

Step 1. Do you have an impairment or combination of impairments which meets or equals the severity of an impairment listed in Appendix 1 of Subpart P of Part 404 of this chapter? If you do, your disability will be found to continue. 20 CFR 416.994(b)(5)(i).

Step 2. If you do not, has there been a medical improvement as defined in paragraph (b)(1)(i) of this section? If there has been medical improvement as shown by a decrease in medical severity, see Step 3 in paragraph (b)(5)(iii) of this section. If there has been no decrease in medical severity, there has been no medical improvement. (see Step 4 in paragraph (b)(5)(iv) of this section.) 20 CFR 416.994(b)(5)(ii).

Step 3. If there has been medical improvement, we must determine whether it is related to your ability to do work in accordance with paragraphs (b)(1)(I) through (b)(1)(iv) of this section; i.e., whether or not there has been an increase in the residual functional capacity based on the impairment(s) that was present at the time of the most recent favorable medical determination. If medical improvement is not related to your ability to do work, see Step 5 in paragraph (b)(5)(v) of this section. 20 CFR 416.994(b)(5)(iii).

Step 4. If we found in Step 2 in paragraph (b)(5)(ii) of this section that there has been no medical improvement or if we found at Step 3 in paragraph (b)(5)(iii) of this section that the medical improvement is not related to your ability to work, we consider whether any of the exceptions in paragraphs (b)(3) and (b)(4) of this section apply. If none of them apply, your disability will be found to continue. If any of the first group of exceptions to medical improvement applies, see Step 5 in paragraph (b)(5)(v) of this section. If an exception from the second group of exceptions to medical improvement applies, your disability will be found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process. 20 CFR 416.994(b)(5)(iv).

Step 5. If medical improvement is shown to be related to your ability to do work or if any of the first group of exceptions to medical improvement applies, we will determine whether all your current impairments in combination are severe (see Sec. 416.921). This determination will consider all your current impairments and the impact of the combination of these impairments on your ability to function. If the residual functional capacity assessment in Step 3 in paragraph (b)(5)(iii) of this section shows significant limitation to your ability to do basic work activities, see Step 6 in paragraph (b)(5)(iv) of this section. When the evidence shows that all your current impairments in combination do not significantly limit your physical or mental abilities to do basic work activities, these impairments

will not be considered severe in nature. If so, you will no longer be considered disabled. 20 CFR 416.994(b)(5)(v).

Step 6. If your impairment(s) is severe, we will assess your current ability to engage in substantial gainful activity in accordance with 416.961. That is, we will assess your residual functional capacity based on all your current impairments and consider whether you can still do work that you have done in the past. If you can do such work, disability will be found to have ended. 20 CFR 416.994(b)(5)(vi).

Step 7. If you are not able to do work you have done in the past, we will consider one final step. Given the residual functional capacity assessment and considering your age, education, and past work experience, can you do other work? If you can, disability will be found to have ended. If you cannot, disability will be found to continue. 20 CFR 416.994(b)(5)(vii).

At Step 1, the objective medical evidence does not establish that the claimant's impairments meet/equal a Social Security Listing. Therefore, disability continues.

At Step 2, the objective medical evidence of record establishes significant improvement in the bladder cancer. In February, April, and October 2010, the medical assessments were bladder cancer with no evidence of recurrent disease. Therefore, the analysis continues to the next step.

At Step 3, the objective medical evidence of record does not establish that the improvement is related to the claimant's ability to do work. Therefore, the analysis continues to Step 5.

At Step 5, the objective medical evidence of record establishes a significant limitation to the claimant's ability to do basic work activities, as defined below.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

Non-severe impairment(s). An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities. 20 CFR 416.921(a).

Basic work activities. When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting.
20 CFR 416.921(b).

At Step 5, the objective medical evidence of record does not establish the claimant's residual functional capacity for his past work.

At Step 6, the objective medical evidence does not establish the claimant's residual functional capacity for other work. Therefore, disability is found to continue.

The department's Program Eligibility Manual (PEM) 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. BEM, Item 261, page 1. Because the claimant meets the definition of disabled under the MA-P program, and because the evidence of record does not establish that claimant is able to work, the claimant meets the disability criteria for continuation of State Disability Assistance benefits.

Therefore, the department has not established a recovered nondisability, by the necessary competent, material and substantial evidence on the whole record.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that a recovered nondisability was not medically established.

Accordingly, Medicaid/SDA termination is REVERSED with reinstatement of benefits within ten work days is ORDERED.

Medical review recommended in July 2012.

William A Sundquist

William A. Sundquist
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 27, 2011

Date Mailed: July 27, 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.

WAS/tg

cc:

