

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

IN THE MATTER OF:



Reg. No: 2011-38697  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Hearing Date: December 7, 2011  
County DHS Ionia

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

**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 December 7, 2011. Claimant personally appeared and testified.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On January 17, 2012, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

**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 and State Disability Assistance benefit recipient and his MA/SDA case was scheduled for review in April 2011.
- (2) In April, 2011, Claimant filed a Redetermination for Medical Assistance and State Disability Assistance benefits alleging continued disability.
- (3) On June 7, 2011, the Medical Review Team denied Claimant's application stating that Claimant had medical improvement. (Department Exhibit A, pp 1-2).

- (4) On June 14, 2011, the department caseworker sent Claimant notice that his MA case and SDA would be closed based upon medical improvement.
- (5) On June 17, 2011, Claimant filed a request for a hearing to contest the department's negative action.
- (6) On July 15, 2011, the State Hearing Review Team (SHRT) denied Claimant's Redetermination indicating that Claimant is capable of performing simple, unskilled, light work pursuant to Medical-Vocational Rule 202.20. SDA was denied per BEM 261 because the SHRT found that the nature and severity of Claimant's impairments would not preclude work activity at the above stated level for 90 days. (Department Exhibit B, pp 1-2).
- (7) On January 17, 2012, the SHRT denied Claimant's MA-P, using Vocational Rule 202.13 as a guide. SDA was denied because the nature and severity of Claimant's impairments would not preclude work activity for 90 days. (Department Exhibit C, pp 1-2).
- (8) On September 1, 2010, Claimant was seen by his doctor for follow-up from his neurosurgery. He complained of swelling in his legs and left arm. Claimant was short of breath, and had peripheral and pitting edema, and left partial hemiparesis with left hand swelling. He was using a walker. (Department Exhibit A, p 41).
- (9) On September 15, 2010, Claimant was evaluated for a post operative visit. He had fallen a few times but denied any changes or new symptoms. (Department Exhibit A, pp 109-110).
- (10) On October 6, 2010, Claimant was evaluated for a post operative visit following a C3-C4 laminectomy and fusion in August 2010. He had noticed very small improvements. He had continued weakness and pain throughout his upper and lower extremities. He continued to have random spasms in his arms and legs. (Department Exhibit A, pp 107-108).
- (11) On November 9, 2010, Claimant was evaluated by his neurologist for a post operative visit from cervical laminectomy for stenosis posterior cervical fusion in August 2010. His blood pressure was 198/160, right arm sitting. A repeat blood pressure on his left arm, sitting, was 129/91. His blood pressure results were discussed and it was decided they would be monitored at home to determine if he needs a medication change. X-rays of the cervical spine revealed postoperative changes posteriorly at C3-C4. There were lateral mass screws present bilaterally in excellent position with no sign of instrumentation failure. There was bone growth in the C3-C4 facet joints bilaterally. (Department Exhibit A, pp 104-106).

- (12) On December 14, 2010, Claimant saw his doctor and complained of knee pain and anxiety. He was diagnosed with hypertension, high cholesterol and chronic knee pain. Claimant was referred to physical therapy for evaluation of treatment for cervical spinal fusion and deconditioning. (Department Exhibit A, pp 35, 39).
- (13) On January 14, 2011, x-rays of Claimant's right knee revealed chondrocalcinosis with calcification of the menisci. His left knee was a normal study. (Department Exhibit A, pp 58-59).
- (14) On January 25, 2011, Claimant saw his doctor for follow-up of his knee and back pain as well as hypersensitivity all over body. Claimant used a cane for ambulation. Claimant was diagnosed with knee and back pain, incontinence, depression, anxiety, and insomnia and prescribed knee high compression stockings and physical therapy. (Department Exhibit A, pp 34, 38).
- (15) On February 9, 2011, Claimant saw his neurologist for a post operative visit from the posterior cervical fusion in August, 2010. He complained of posterior neck pain with radiation out into both shoulders and down between his shoulder blades, associated with a diffuse pattern of bilateral arm/hand and fingers burning. He also had a lot of muscle spasms throughout his upper and lower extremities and bilateral knee pain. Neck was supple with full range of motion. Spine x-ray revealed postoperative changes from previous C5 and C6 corpectomy with a C4 through C7 anterior fusion and plating. There was also evidence of C3 and C4 laminectomy with posterior instrumentation and posterior lateral fusion. All instrumentation was in excellent position with no sign of failure and there appeared to be solid fusion from C3 to C4 posteriorly and C4 to C7 anteriorly. He was assessed with cervical spondylosis with myelopathy and neck pain. His subjective complaints and objective findings were consistent with post op. (Department Exhibit A, pp 101-103).
- (16) On February 15, 2011, Claimant saw his doctor for ringing in ears and knee pain. Claimant was diagnosed with chronic sinusitis, and peripheral neuropathy. (Department Exhibit A, p 33).
- (17) On April 28, 2011, Claimant underwent a medical examination on behalf of the department. Claimant had an extremely flat affect and depressed mood. His hearing appeared normal and his speech was clear without a stutter. He did use a walker which is absolutely required for him or else he will fall. He does have a wide based gait. His musculoskeletal examination found his range of motion was decreased in the cervical spine, lumbar spine, bilateral shoulders and knees. There was tenderness to palpation over his hands, arms, shoulders, neck, back, and knees. The neurological examination revealed increased pain sensation to light touch

over his hands, arms, shoulders, and legs. Conclusions: Neck pain was secondary to a history of questionable cervical spine fractures versus herniations, although he did have a fusion of the cervical spine. Shoulder pain was secondary to bilateral rotator cuff tears which he had repaired in 1995 and 2009 and he had very limited range of motion of his shoulders and extreme tenderness to palpation. Back pain was secondary to disc herniation. Knee pain was secondary to degenerative joint disease and he is a candidate for bilateral knee replacement surgery. Complex regional pain syndrome was most likely due to history of child abuse and injuries secondary to abuse. He does need to have a full evaluation by a psychologist. (Department Exhibit A, pp 23-25).

- (18) On May 12, 2011, a mental status examination was performed on Claimant on behalf of the department. The psychologist opined that the prognosis for Claimant was poor given the nature of his health problems. While his issues with mood may have been more longstanding, they are certainly exacerbated by the chronic pain which is not being well managed at this point. As long as he struggles with chronic pain and a decrease in his functioning for daily activities, he is going to have issues with depression and anxiety as he continues to feel more and more limited in his ability to contribute, not only to his own life, but to the household. His primary limitations appeared to be physical in nature, but his affective components were a secondary issue. (Department Exhibit B, pp 4-9).
- (19) Claimant was receiving Medicaid and State Disability Assistance at the time of this review.
- (20) Claimant alleges as disabling impairments dyslexia, mild tremors, degenerative disc disease, cervical spinal stenosis, peripheral neuropathy, depression, anxiety, post traumatic stress disorder, chronic back and neck pain, chondrocalcinosis, seizures, and muscle spasms.
- (21) Claimant is a [REDACTED] man whose birth date is [REDACTED]. Claimant is 5' 6" tall and weighs 224 pounds. Claimant is a high school graduate.
- (22) Claimant last worked in 2007 as a landscaper.

### **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 Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

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 Reference Tables Manual (RFT).

Pursuant to the federal regulations at 20 CFR 416.994, once a client is determined eligible for disability benefits, the eligibility for such benefits must be reviewed periodically. Before determining that a client is no longer eligible for disability benefits, the agency must establish that there has been a medical improvement of the client's impairment that is related to the client's ability to work. 20 CFR 416.994(b)(5).

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 decisions 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 first questions ask:

- (i) Are you engaging in substantial gainful activity? If you are (and any applicable trial work period has been completed), we will find disability to have ended (see paragraph (b)(3)(v) of this section).

Claimant is not disqualified from this step because he has not engaged in substantial gainful activity at any time relevant to this matter. Furthermore, the evidence on the record fails to establish that Claimant has a severe impairment which meets or equals a listed impairment found at 20 CFR 404, Subpart P, Appendix 1. Therefore, the analysis continues. 20 CF 416.994(b)(5)(ii).

The next step asks the question if there has been 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).

If there is a decrease in medical severity as shown by the symptoms, signs and laboratory findings, we then must determine if it is related to your ability to do work. In paragraph (b)(1)(iv) of this section, we explain the relationship between medical severity and limitation on functional capacity to do basic work activities (or residual functional capacity) and how changes in medical severity can affect your residual functional capacity. In determining whether medical improvement that has occurred is related to your ability to do work, we will assess your residual functional capacity (in accordance with paragraph (b)(1)(iv) of this section) based on the current severity of the impairment(s) which was present at your last favorable medical decision. 20 CFR 416.994(b)(2)(ii).

The State Hearing Review Team upheld the denial of SDA and MA benefits on the basis that Claimant's medical condition has improved. Claimant was approved for SDA and MA benefits after being diagnosed with degenerative joint disease, arthritis, degenerative disc disease, hypertension, seizures, neuropathy, depression and anxiety. Pursuant to the federal regulations, at medical review, the agency has the burden of not only proving Claimant's medical condition has improved, but that the improvement relates to the client's ability to do basic work activities. The agency has the burden of establishing that Claimant is currently capable of doing basic work activities based on objective medical evidence from qualified medical sources. 20 CFR 416.994(b)(5).

In this case, the agency has not met its burden of proof. The agency has provided no evidence that indicates Claimant's improvement relates to his ability to do basic work activities. The agency provided no objective medical evidence from qualified medical sources that show Claimant is currently capable of doing basic work activities. Accordingly, the agency's SDA and MA eligibility determination cannot be upheld at this time.

#### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the agency failed to establish that Claimant no longer meets the SDA or MA disability standard.

Accordingly, the agency's determination is REVERSED.

It is SO ORDERED.

/s/ \_\_\_\_\_  
Vicki L. Armstrong  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: 2/9/12

Date Mailed: 2/9/12

**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.

VLA/ds

