

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

IN THE MATTER OF:



Reg. No: 2011-46522
Issue No: 4031
Case No: [REDACTED]
Hearing Date: November 3, 2011
Saginaw 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 November 3, 2011. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly determine that claimant was no longer disabled and deny his review application for State Disability Assistance (SDA)?

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 State Disability Assistance benefit recipient and his State Disability Assistance case was scheduled for review in March 2011.
- (2) On May 23, 2011, the Medical Review Team denied claimant's continued State Disability Assistance benefits.
- (4) On March 31, 2011, the department caseworker sent claimant notice that his review application was denied.
- (5) On July 7, 2011, claimant filed a request for a hearing to contest the department's negative action.

- (6) On September 16, 2011, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant was involved in a pedestrian car accident in August 2010. He sustained T10 and T11 fractures, right sided pneumothorax and multiple bilateral rib fractures. He was later found to have a fibular shaft fracture and knee injury. In December 2010, he had good strength in his legs but he did have significant external rotation of his left leg. In April 2011 x-rays showed the fracture of the fibula had healed but was not in good alignment. In April 2011 he was able to ambulate satisfactorily. The medical information does support the MRT decision in that the claimant did have medical improvement. The claimant would have been limited to light work based on his findings. His past work as a fast-food worker is typically performed at the light exertional level. The claimant has had significant medical improvement. His fractures have healed. The claimant is not currently engaging in substantial gainful activity (SGA) based on the information this is available in the file. The claimant's impairments do not meet/equal the intent of severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of light work. The claimant's past work was as a fast-food worker and is typically performed at the light exertional level in the national economy. Therefore, the claimant retains the capacity to perform his past relevant work. SDA is denied due to medical improvement and per 20CFR416.920(e) due to the capacity to perform past relevant work.
- (7) Claimant is a 56-year-old man whose birth date is [REDACTED]. Claimant is 5' 7" tall and weighs 156 pounds. Claimant attended the 9th grade and does have a GED. Claimant is able to read and write and does have basic math skills.
- (8) Claimant last worked in a restaurant in 1999. He worked at [REDACTED], and [REDACTED] as a cook. Claimant testified that he stopped working in 2010 when he got hit by a car. He was doing odd jobs like painting and putting in windows for approximately 25 years.
- (9) Claimant alleges as disabling impairments: Stiff and sore back, arthritis in the hips, hands, and back, inability to walk long distances and pain in his body as well as cramps and tightening in his legs and arms.

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

The SDA program differs from the federal MA regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

In general, claimant has the responsibility to prove that he/she is disabled. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

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 this case, the claimant is not engaged in substantial gainful activity and has not worked since 2010.

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 have medical improvement. In this case this Administrative Law Judge finds that the claimant can perform his past work as a cook in a fast-food restaurant.

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 Medical Assistance and/or State Disability Assistance.

The objective medical evidence in the record indicates that the claimant was admitted in August 2010 after he was a pedestrian and was struck by a car and reportedly flipped over the vehicle. The claimant sustained T11 & T10 fractures, right sided pneumothorax and multiple bilateral rib fractures. He also had hematuria lactic acidosis and alcohol intoxication as well as urine drug screen positive for cannabis (Pages 57, 58). He was later also found to have a fibular shaft fracture and knee injury. (Pages 142, 143). In December 2010, the claimant was approximately 4 months from his hit and run accident. He was wearing a TLSO, which he is to wear for 6 months total. Knee reflexes were present and ankle reflexes were absent. Straight leg raise was negative bilaterally. He had good strength in the psoas muscle bilaterally and good strength in the hip flexors and quadriceps bilaterally. There was no ankle clonus detected. He did show significant external rotation of his left lower extremity from the prior fracture. (Page 10). In April 2011, the claimant was able to ambulate satisfactorily. He had difficulty heel walking. He had some pain and crepitus in the right knee but there was no effusion. (Page 4). X-rays of the right tibia and fibula dated April 2011 showed a healed fracture of the fibula of the upper third, which had healed with callous formation and mild angulation and was not in good alignment. (Page 6).

At Step 2, claimant's impairments do not equal or meet 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.

Thus, this Administrative Law Judge finds that claimant's. 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, this Administrative Law Judge finds claimant can perform at least sedentary work even with his impairments. This Administrative Law Judge finds that claimant does have medical improvement.

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. In this case, this Administrative Law Judge finds that claimant could probably perform his past work as a cook in a fast-food restaurant.

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, based upon the claimant's vocational profile of, MA-P is denied using Vocational Rule as a guide. Claimant can perform other work in the form of light work per 20 CFR 416.967(b). This Administrative Law Judge finds that claimant does have medical improvement in this case and 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 proposed to cancel claimant's 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 disability and application for State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence. Claimant does have medical improvement based upon the objective medical findings in the file.

